Supreme Court, U.S.
FILED

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No. _____
SUPREME COURT OF THE UNITED STATES
October Term, 1998

In Re DONALD EDGAR JOHNSON,
And Proposed Class Of Nonlawyer Public Nightclub Servicers Swindled-To-Indigency By State Agents, Lawyers, And Their Clients' Confidence Game Plus Longtime Continuing Conspiracy To Interfere With Civil Rights,

Petitioners,

V.

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., THE ESTATE OF CARL ALFRED JOHNSON, SR., LANDMAN LATIMER CLINK & ROBB, CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON PC, THE **STATE OF MICHIGAN**, AND ROBERT J. DANHOF, Michigan Court Of Appeals 1978-89 Chief Judge, Jointly And Severally, Plus **U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT,**

Respondents.

PETITION FOR WRIT OF MANDAMUS

DONALD EDGAR JOHNSON (1943-47 Pvt 36457669 + US Army Lieutenant 01951488), In Pro Per Counsel For Petitioners
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21 pp

I.

WHERE PREJUDICED STATE AND FEDERAL COURTS' REMEDY HAS BEEN UNAVAILABLE WITH RESPECT TO 25 YEARS PRO SE NONLAWYER'S HIGH-STAKE "JUST COMPENSATION" CLAIM IN 9TH YEAR OF MAGISTRATE-ONE UNQUALIFIED JUDGE DISTRICT COURT'S PENDING CONST. AMENDS. 1,5,14; 42 USC § 1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS; AND 28 USC § 1331 FEDERAL QUESTION CLASS ACTION PRETRIAL PROCEEDING; -- WHETHER A PROMPT MANDAMUS MUST ISSUE TO COURT OF APPEALS TO ISSUE MANDAMUS TO DISTRICT COURT TO FRCVP 60(b)(6) ENSURE THAT THE COMPLETE 1990-98 RECORD IS IN FILE, AND (A) HOLD A FIRST-EVER FEDERAL HEARING TO REVIEW CONSTITUTIONAL CLAIM THAT STATE AGENTS AND THEIR CLIENTS 1964-70 CONFIDENCE GAME-STOLE HIGHLY-SKILLED NONLAWYER PUBLIC SERVICER'S HARD-WON TOTAL CORPORATE PLUS NEAR-TOTAL PERSONAL PROPERTIES/POWER OF ATTORNEYS FOR PUBLIC AND PRIVATE USE-INFLUENCING VOTES WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION -- FOLLOWED BY A 28 YEARS CONTINUING CONSPIRACY TO INTERFERE WITH HIS CIVIL RIGHTS; DETERMINE ABSTENTION, CLASS CERTIFICATION, STAY OF STATE PROCEEDINGS, AND 3-JUDGE ISSUES; -- OR (B) CONVENE A 3-JUDGE COURT PURSUANT TO "OTHERWISE" REQUIREMENT OF 28 USC § 2284(a)(b)(3) WHERE 42 USC § 1985 IS EXPRESS STATUARY EXCEPTION TO 28 USC § 2283 AND THIS CASE SHALL NOT BE DISMISSED BY A ONE JUDGE DISTRICT COURT?

II.

WHETHER THE CHIEF JUSTICE MUST RECUSE HIMSELF FROM THIS PROCEEDING?

PARTIES TO THE PROCEEDING

DONALD EDGAR JOHNSON,[n1] AND PROPOSED CLASS OF NONLAWYER PUBLIC NIGHTCLUB SERVICER VICTIMS OF STATE AGENTS' AND THEIR CLIENTS' CONFIDENCE GAME-SWINDLING-TO-INDIGENCY PLUS LONGTIME CONTINUING CONPIRACY TO INTERFERE WITH CIVIL RIGHTS,
Petitioners,

V.

RICHARD GORDON JOHNSON,[n2]

CARL ALFRED JOHNSON, JR.,[n3]

THE ESTATE OF CARL ALFRED JOHNSON, SR.,[n4]

LANDMAN, LATIMER, CLINK & ROBB,[n5]

CULVER, LAGUE & McNALLY,[n6]

O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF,[n7]

O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND PC,[n8]

THE STATE OF MICHIGAN, And ROBERT J.DANHOF, Michigan Court of Appeals 1978-89 Chief Judge, Jointly And Severally, Plus
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondents.

[n1] In behalf of himself, his proof of ownership of stolen 1955-65 KANDY TAPES & RECORDS CORP. (Indiana-Amer.Fed.Musicians) (no parent), his stolen KANDY TAPES & RECORDS CORP.(Mich-AFM), Kandy Music Publishers (BMI), Homestead, Mobile Home/Office/Studio, 6½ Years' wages, and 25 Years' Ongoing Litigation Costs.

[n2]+ JOHNSON MOLD & MFG CO. Mich. Corp., etc.

[n3]+ PORT CITY MACHINE & TOOL CO. Mich. Corp.

[n4]+ PORT CITY MACHINE & TOOL CO. Mich. Corp.

[n5]+ LANDMAN LATIMER CLINK & ROBB Mich. Corp.

[n6]+ CULVER KNOWLTON EVEN & FRANKS Mich. Corp.

[n7]+O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND PC

[n8]+ PARMENTER & O'TOOLE Mich. Corp.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS

RELATED: Johnson v. Johnsons, Mich S. Ct. No. 83419, COA No. 92822 at 432 Mich 858 (1989); reh. den. 432 Mich 859, S. Ct. #88-2116 Cert. Denied; reh denied 10/23/89.

Johnson v. Johnson, No. 91-1160, 1991 U.S. App. LEXIS 17922, at *2 (6th Cir. July 29, 1991, cert. denied, 502 US 1059, 117 LE2d 109 (1992); reh. denied on 9/27/91.

Johnson v. Johnson, No. 92-1829, 1992 U.S. App. LEXIS 34749, at *4-5 WL 392892 (6th Cir. Dec. 23, 1992), Aff'd WD Mich, **983 F2d 1066; S.Ct. #93-557 writ of mandamus denied; reh. denied.**

RELATED: DONALD EDGAR JOHNSON v. Estate of CARL A. JOHNSON, SR. No. 97521 Mich. Supreme Ct at 444 Mich 957 (1994), S.Ct. #94-146 writ of mandamus denied; reh denied.

Johnson v. Johnson, No. 94-2305, 1995 WL 385142 (6th Cir. April 13, 1995 & June 27, 1995), S.Ct. #95-934 cert. denied, 116 S.Ct. 916, reh denied (1996).

Donald Edgar Johnson v. Richard G. Johnson, et al, Nos. 96-1826 and 96-1979, 113 F3d 35 (6th Cir. 5/1/97 & 6/12/97), reh en banc denied. (There was no petition to U.S. Supreme Court).

JURISDICTION

The interlocutory Order sought to be reviewed was file-dated 11/9/98.

The denial of rehearing was 12/23/98, and there was no extension of time to file for a petition for writ of mandamus.

The clerk's 2/12/99 letter rejected Petitioners' 2/9/99 Petition.

The provisions believed to confere jurisdiction to review are 28 USC §§ 1651(a), 2101(c)(f); and S. Ct. Rules 14.5, 20.2, 33.1(d).

28 USC § 2403(a) may apply, service has been made on the Solicitor General of the United States pursuant to S. Ct. Rule 29.4(b), and the Court of Appeals for the Sixth Circuit did not certify to the U.S. Attorney General the fact that the constitutionality of Acts of Congress 28 USC §§ 2283,2284(a)(b)(3) and 42 USC § 1985(2)(3) were drawn into question.

CONSTITUTION AND LAWS INVOLVED

"Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const. Amend. 1.

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.

"All persons born * * * in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." Const. Amend. 14.

"Conspiracy to interfere with civil rights * * * (2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State * * * conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protction of the laws; * * * (3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws * * * whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators." 42 USC § 1985(2)(3). (Emphasis added).

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and Title "CRIMES." for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed

by the constitution and statutes of the State where the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitutuion and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of section 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], * * * the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 USCS § 1988. (Emphasis added).

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term [session] at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith." 28 USCS § 144.

"(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; (2) Where in private practice he served as lawyer in the matter in controversy,

or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; * * * (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party of the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; (5) He * * * (iv) Is to the judge's knowledge likely to be a material witness in the proceedings." 28 USCS § 455(a)(b)(1)(2)(4)(5)(iv).

"Notwithstanding any provision of law to the contrary, the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties." 28 USC § 636(b)(1)(C).

"(b) * * * (3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States * * * (c) * * * (4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment. (5) Cases in the district courts under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States." 28 USCS 636(b)(3)(c)(4)(5).

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 USCS § 1331.

"The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to * * * copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in * * * copyright cases." 28 USC § 1338(a).

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 USC § 1651.

"Any * * * writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for **within 90 days** after the entry of such judgment or decree. * * * (f) * * * the enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court..." 28 USCS § 2101(c)(f).

"A court of the United States may not grant an injunction to stay proceedings in a State court **except as expressly authorized by Act of Congress, or when necessary to aid of its jurisdicition,** or to protect or affectuate its judgments." **28 USCS § 2283.** (Emphasis added).

"**A district court of 3 judges shall be convened when otherwise required by Act of Congress.**" **28 USC § 2284(a).** (Emphasis added).

"In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is

presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State. ...

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment." 28 USC § 2284(b)(1-3).

"In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of an Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

The United States shall, subject to the applicable provision of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality." 28 USC § 2403(a).

"In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of the mind of a person may be avered generally." FRCVP 9(b).

"**Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A Summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." FRCVP 56(c).

"A motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." FRCVP 59(e).

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (5) ... it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time * * * This rule does not limit the power

of a court to * * * set aside a judgment for fraud upon the court. * * * the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." FRCVP 60(b)(5)(6).

"A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." FRCVP 72(b).

Writs of Mandamus and Prohibition, and Other Extraordinary Writs (a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing. (1) A party petitioning for a writ of mandamus or prohibition directed to a court shall file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party shall also provide a copy to the trial court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)(A)The petition shall be titled "In re [name of petitioner]."

(B) The petition shall state:

(i)the relief sought;

(ii)the issues presented;

(iii)the facts necessary to understand the issues presented by the petition; and

(iv)the reasons why the writ should issues.

(C)The petition shall include copies of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3)When the clerk receives the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs, Procedence. (1)The court may deny the petition without an answer. Otherwise, it shall order the respondent, if any, to answer within a fixed time.

(2)The clerk shall serve the order to respond on all persons directed to respond.

(3)Two or more respondents may answer jointly.

(4)The court of appeals may invite or order the trial court judge to respond or may invite amicus curiae to do so. The trial court judge may request permission to respond but may not respond unless invited or ordered to do so by the court of appeals.

(5)If briefing or oral argument is required, the clerk shall advise the parties, and when appropriate, the trial court judge or amicus curiae.

(6)The proceeding shall be given preference over ordinary civil cases.

(7)The circuit clerk shall send a copy of the final disposition to the trial court judge..." F.R.A.P. 21.

"If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely." S Ct R. 14.5.

"The petition * * * shall follow insofar as applicable, the form of a petition for a writ of certiorari..." S Ct R. 20.2.

"The page limits do not include the pages containing the questions presented, the list of parties and corporate affiliates of the filing party, the table of contents, the table of cited authorities, or any appendix. Verbatim quotations required under Rule 14.1(f), if set out in the text of a brief rather than in the appendix, are also excluded." S Ct R. 33.1(d).

FUNCTIONS OF THE PARTIES

Petitioners: To ensure that constitution-mandated rights are promptly provided to highly-skilled nonlawyer public nightclub servicers for their substantial private properties/services taken for public and private use-influencing votes.

Respondents: To ensure that highly-skilled nonlawyer public nightclub servicers' substantial private properties/services are all invested in a "joint venture bait and switch to moneylender" confidence game to purchase a public nightclub land-building-remodeling contingent to purchase of a State-controlled liquor license and promise of fairly incorporating the venture -- for then taking "all" for public and private use-influencing votes under color of State law **without federal constitutional rights** followed by a continuing conspiracy to interfere with civil rights.

STATEMENT OF INTERLOCUTORY CAUSE

Since 1964, Petitioner nonlawyer Donald Edgar Johnson (Don) and a proposed class of similar invidiously-discriminated-against highly-skilled **nonlawyer** public nightclub servicers were victims of Michigan bad-faith agents, **lawyers**, and their greedy clients' (perpetrators')

confidence game stealing of titles to their substantial private properties (including power of attorneys) for public and private use-influencing votes, under color of state law and threats of violence/death, without federal constitution rights of reasonable access, due process, equal protection, and just compensation.

> "'Confidence Game' is term of art involving taking of money by fraud from victim by means of trick or deception after victim's confidence has first been secured through some false representation or deception." State v. Carr.

Said perpetrators set nonlawyer public nightclub servicers into "joint venture bait and switch to moneylender" confidence games to pool their moneys for joint venture purchase of public nightclub land contracts contingent to state-approved and controlled liquor license purchases, promised them fair equity in the venture's quick and fair incorporation soon after nightclub opened for business, solicited their signing and locked away unlawful confidence game agreements with the State that their joint venturers were moneylenders with valid promissory note-mortgage on the land as security, kept postponing incorporation, exhausted them of their contributions against increased competition and burglaries, denied them promised fair equity in the venture's incorporation, foreclosed upon them as debtors to their joint venturers going down the highway disguised as moneylenders, and deprived them, under color of state law and threats of violence/death, of their private properties of power of attorneys plus monumental equity in the nightclubs under "bought-with-stolen-private-properties" state agent judges' directions for sale of the nightclub lands with unpaid taxes at public auctions within abuse of state

constitution for equal protection and laws against unqualified judges issuing unwarranted default judgments -- in violation of the federal constitution and laws.

Thereafter, perpetrators and their perpetuators conspired to continuously interfere with victims' civil rights with frauds and undue influence upon courts-tampering with evidence so as to delay and deny pursuit of "just compensation" via due process impartial justice.

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While on the 1964 nightclub joint venture to 15 years land contract purchase the nightclub land, building, and liquor licenses, Respondent Richard G. Johnson (Richard) was president of the family venture who negotiated terms for purchase, ensured that the venture was insured by Robert Tuxbury, partially financed by Respondent LANDMAN's client (Hackley Bank), and represented by Respondent Carl-Sr and his privies' attorney: Respondent O'TOOLE STEVENS a/k/a ENGLE & ENGEL, ENGLE & HIPKISS, and Respondent O'TOOLE JOHNSON.

On 1/6/65,[127a] 2/9-2/15/65,[129a] and 4/15/65,[130a] the Respondent state agent multi-representation lawyers and their clients, the Respondent 3 Johnsons, switched the venture from being a joint venture to a moneylender venture by disguising the 3 Johnson joint venturers for going down the highway as moneylenders to Don with Don's invalid $20,600 promissory note and mortgage on the jointly-purchased land as security.

Richard's state agent realtor A.J. Mark, who was 9/5/64 approved by the Respondent 3 Johnsons, instructed Don to sign the unlawful 1/6/65 "switch"[127a] drafted by Respondent Thomas J. O'Toole.

Don was told by realtor Mark that state agents approved the above temporarily

until quick, fair incorporation after state controlled inspection-approval and opening as Don dba Musikist nightclub.

On 6/26/70 and after repeated refusals to fairly incorporate, exhausted-burglarized Don dba Musikist nightclub -- who never gave away his phono records-music publishing assets -- was defendant against Respondent LANDMAN's Respondent atty Fred C. Culver Jr.'s Respondent Richard's 5/20/70 foreclosure in Richard's ex-attorney unqualified County Judge Larnard's wrongful default judgment putting the joint venture partially-purchased $125,000 nightclub land-building with unpaid taxes for sale at public auction.[53a]

On 12/9/74 after Don gave Respondent Carl A. Johnson, Sr. (Carl-Sr) two power of attorneys for winding down the venture and as Respondents were conspiring to further interfere with Don's civil rights, Don was plaintiff against Respondent LANDMAN's "from-Chicago" atty William F. McNally representing the nightclub's SELLERS and the Respondent 3 Johnsons joint venture BUYERS disguised as moneylenders in "bought" Judge Piercey's wrongful partial-trial judgment of "no cause for action".[56a]

The State's highest court never ruled on Don's constitutional claims.[69a,71a,79a, 98a,108a,114a-116a]

Please read 1955-89 pertinent facts.[154a]

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By 1990, Petitioner Don, age 67, had been a pro se nonlawyer for 1973-90 17 years with short-time exceptions involving bad-faith Grand Rapids' GILLARD & GILLARD and Muskegon's JUSTIAN & VEURINK.

The 1970-89 state and federal courts' remedy for vindication of Don's constitutional claim has been unavailable where the courts were prejudiced by (a) Respondents' false and misleading statements, frauds, and undue influence;

and (b) judges "bought" with Don's stolen private properties.

On 2/27/90, Don timely filed his Amendments 1,5,14; 28 USC § 1331 Federal Question; FRCVP 8(a)(1) complaint with the appropriate WD Mich SD U.S. District Court No. 90cv175 against 7 of the 9 Respondents.

> "...That defendants caused the denial of due process and just compensation for private properties taken for private and public use in violation of Constitutional Amendments 1, 5, and 14." Don's 2/27/90 Complaint, p 2, filed in District Court No. 90cv175.

On 6/7/90 after 7 Respondents submitted their "80 Orders-7 Courts" dossier-motion to dismiss, the Magistrate granted Don leave to proceed on his now-pending civil rights class action 4th amended complaint against 9 defendants that also included Respondents O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND P.C.; Michigan Court of Appeals 1978-89 Chief Judge ROBERT J. DANHOF; plus 42 USC § 1985(2)(3) Conspiracy to Interfere With Civil Rights.[117a]

Don referred to 1897 Chicago and 1906 Douglas Park Jockey Club authorities in his 1990 pleadings.

Then-U.S. Attorney John Smietanka or his staff refused to meet with Don.

Don's constitutional claim is high-stake because he has never been provided just compensation for his substantial private corporate and personal properties stolen for public and private use-influencing votes.

His claim is substantial and nonfrivolous because the federal constitution and laws were violated as described[117a] in Don's 4th amended complaint[117a] and subsequent pleadings.

Don has been a pro se nonlawyer for 25 years because (a) his short term lawyers apparently feared jeopardizing their legal careers by working against

Michigan's state/county treasuries and their bad faith agents' frauds and undue influence, or (b) they were bought off.

Moreover, their costs and likelihood of real timely just compensation were too prohibitive.

At least three copy shops tampered with Don's evidence.

Don's private properties have been burglarized repeatedly 1945-to-date involving Respondent Richard and others.

The 1990-98 magistrate-one unqualified judge (Benjamin F. Gibson) district court granted bad-faith state agents' pretrial motions for 11th amendment immunity, a protective order from answering Don's Request For Admissions, and res judicata disposition grounded on movant lawyer-agents' evidence, not nonmovant nonlawyers' evidence.[6a,9a]

The Court of Appeals #91-1160 mischaracterized the res judicata dismissal of the complaint as a failure to state a claim dismissal of the action, not the complaint, and affirmed.[10a]

Don couldn't get the 12/19/90 opinion[6a] and dismissal set aside or vacated in the magistrate-one unqualified judge (Gibson) District Court which 4/17/92 erroneously announced[11a] that the case was closed.

The Court of Appeals has been prejudiced (a) by Respondent state agents' 1991 masquarading as defendant-appellants for switching their deceptive evidence/appendix for Petitioners' preponderance of evidence/appendix, and (b) by 1964-65 perpetrator n/k/a Court of Appeals Circuit Judge Albert J. Engel's 1992-93 intervening as a decisionmaker.

Circuit Judge ENGEL was one of the 1964-65 perpetrators who 12/11/92 intervened while refusing to review the underlying 1990 dismissal.

Nothing was said about Engel's recusing himself before Don moved for his

disqualification.

The erroneously-captioned #92-1829 without Judge Engel's name was published contrary to the 11/9/98 dismissal.[1] 20a,50a

"See Johnson v. Johnson * * *" (unpublished order)." 11/9/98 dismissal, p 1. 50a

It was 3/10/93 before the Court of Appeals corrected the Engel blunder. 92a

This proposed "Just Compensation" class action is in its 9th year of "discoveries disallowed" pretrial proceedings because the two magistrate-one judge district courts were both unqualified, inter alia.

The 1990-98 District Judge Benjamin F. Gibson was unqualified per 1994 affidavit 138a plus 1995-96 abuse of discretion in transmitting essential portions of the 1990-96 record (including pending 4th & rejected 5th amended complaints, Don's preponderance of evidence, and said 1994 affidavit) into the Chicago archives.

District Judge Gibson refused to disqualify himself under 28 USC § 455 and the prejudiced Court of Appeals refused to disqualify him under 28 USC § 144.

Don's preponderance of evidence was 1974 presented to partial trial, was 1982 stolen from county files, 1983 returned, 1983 ordered removed, 1983 stored in Don's bank vault, 1990 presented to District Court, and 1995-96 transmitted to Chicago archives by the "Gibson" court.

Had the 1998 replacement magistrate-one judge (Hillman) district court reviewed Don's complete 4th amended complaint and subsequent pleadings, there might have been a determination that Don has alleged facts for which applicable congressional acts would require the convening of a three-judge district court.

The 1998 District Judge Douglas W. Hillman was unqualified because he was without said missing portions of the 1990-98 record for examining Don's

contentions before entering decisions based upon that record.

The magistrate-one unqualified judge district court procedures took 6 months in 1994 to deny leave to file "3 Judge Court Requested" 5th Amended Complaint, 1997 threatened contempt proceeding rather than schedule a meaningful timely review of constitutional claims for determining the 3-judge court issue, 1998 refused to hold a hearing to review constituional claim or request the convention of a 3-judge court, and 10/26/98 refused to allow a certified interlocutory appeal under 28 USCS § 1292(b).

DURING NINTH YEAR -- Petitioner Don and his proposed class filed their petition for writ of mandamus with a 10/28/98 filing of a copy in District Court and a 11/2/98 filing of original and required 5 copies in the Court of Appeals pursuant to FRAP 21 and 6th Cir R. 23.

Don indicated pertinent parts of the record in need of Court of Appeals review. 147a

The Court of Appeals 11/9/98 denied said petition for writ of mandamus to District Court without requested reviewing of the 1990-98 complete district court record or staying proceedings. 50a

The District Court 11/16/98 issued an unwarranted $200 civil contempt charge for Don's filing for a certified interlocutory appeal under 28 USCS § 1292(b) rather than a direct appeal of Judge Hillman's 10/26/98 order.

And the court of appeals 12/23/98 denied rehearing en banc of its 11/9/98 Order. 96a

Don contends that he has presented a substantial constitutional question and alleged facts that Acts of Congress require convening of a 3-judge court and no one judge dismissal where 42 USC § 1985 is an express statuary exception to 28 USC § 2283 constituting an

"otherwise" requirement to 28 USC 2284(a). 28 USC § 2284(a)(b)(3).

Don's petition for mandamus was not an alternative means for appeal; rather, it was to ensure that district court properly -- with an adequate hearing before a qualified judge -- consider his application for a 3-judge court.

Don's assertions warrant mandamus intervention because they demonstrate a clear abuse of discretion on the part of the lower courts plus conduct amounting to usurpation of judicial power.

The 1970-94 state court records and 1990-98 U.S. district court records should be stayed in order to preserve Don's substantial nonfrivolous contentions in need of examination by qualified judge(s).

ARGUMENT

I. WHERE PREJUDICED STATE AND FEDERAL COURTS' REMEDY HAS BEEN UNAVAILABLE WITH RESPECT TO 25 YEARS PRO SE NONLAWYER'S HIGH-STAKE "JUST COMPENSATION" CLAIM IN 9TH YEAR OF MAGISTRATE-ONE UNQUALIFIED JUDGE DISTRICT COURT'S PENDING CONST. AMENDS. 1,5,14; 42 USC § 1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS; AND 28 USC § 1331 FEDERAL QUESTION CLASS ACTION PRETRIAL PROCEEDING; -- A PROMPT MANDAMUS MUST ISSUE TO COURT OF APPEALS TO ISSUE MANDAMUS TO DISTRICT COURT TO FRCVP 60(b)(6) ENSURE THAT THE COMPLETE 1990-98 RECORD IS IN FILE, AND (A) HOLD A FIRST-EVER FEDERAL HEARING TO REVIEW CONSTITUTIONAL CLAIM THAT STATE AGENTS AND THEIR CLIENTS 1964-70 CONFIDENCE GAME-STOLE HIGHLY-SKILLED NONLAWYER PUBLIC SERVICER'S HARD-WON TOTAL CORPORATE PLUS NEAR-TOTAL PERSONAL PROPERTIES/POWER OF ATTORNEYS FOR PUBLIC AND PRIVATE USE-INFLUENCING VOTES WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION -- FOLLOWED BY A 28 YEARS CONTINUING CONSPIRACY TO

INTERFERE WITH HIS CIVIL RIGHTS; DETERMINE ABSTENTION, CLASS CERTIFICATION, STAY OF STATE PROCEEDINGS, AND 3-JUDGE ISSUES; -- OR (B) CONVENE A 3-JUDGE COURT PURSUANT TO "OTHERWISE" REQUIREMENT OF 28 USC § 2284(a)(b)(3) WHERE 42 USC § 1985 IS EXPRESS STATUARY EXCEPTION TO 28 USC § 2283 AND THIS CASE SHALL NOT BE DISMISSED BY A ONE JUDGE DISTRICT COURT.

Const. Amends. 1,5,14; 42 USCS § 1985(2)(3); 28 USC §§ 144,455,1651(a), 2283,2284(a)(b)(3); FRCVP 60(b)(6).

A. THE RESPONDENT STATE AND ITS AGENTS 6/26/70 DENIED PETITIONER DON THE EQUAL PROTECTION OF THE FEDERAL LAWS AND DEPRIVED HIM OF HIS CORPORATE AND PERSONAL PROPERTIES WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, AND JUST COMPENSATION IN VIOLATION OF AMENDMENTS 1,5,14.

"Where state officers in the exercise or attempted exercise of their official authority, deny to any citizen, whether an individual or a corporation, the equal protection of the laws or deprive him of his property without due process of law, the act is that of the state, and comes within the prohibition of the fourteenth constitutional amendment." Douglas Park Jockey Club.

"[T]he act of the Commission was arbitrary, unduly oppressed, and an unjust discrimination against the complainant, whereby it was denied the equal protection of the laws of the state of Kentucky, and such discrimination, if permitted to stand, would greatly injure the complainant in its property, and that, as all this was done by the officers of the state, it was done by the state itself, and therefore controvenes the fourteenth amendment to the Constitution of the United States." Id, 423.

"[A] judgment of a state court, even if it be authorized by statute, whereby private property is taken for the State or under its direction for public use, without compensation made or secured to the owner, is, upon principle

and authority, wanting in due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest court of the State is a denial by that State of a right secured to the owner by that instrument." Chicago.

> "The prohibition of the 14th Amendment of the Federal Constitution against taking property without due process of law refers to all instrumentalities of a state, and is therefore violated whenever any person, by virtue of public position under a state government, deprives another of any right protected by that Amendment against deprivation by the state. Id.

"The just compensation clause of the Fifth Amendment was designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." National.

"The Fifth Amendment's prohibition against the taking of private property for public use without just compensation applies against the states through the Fourteenth Amendment." Webb's.

"No person shall be denied the equal protection of the laws." Michigan 1963 Const. Art. 1§ 2.

"Corporation cannot be required to use its property for benefit of public without receiving just compensdation for services rendered by it." Smyth.

"Equitable relief will be afforded where the judgment has been procured as result of calculated and premeditated conspiracy to defraud." Jungersen.

"The deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not itself unconstitutional; what is unconstitutional is the deprivation of such interest without due process of law." Mertik.

"Federal civil rights claim alleging that defendants deprived plaintiff of property without due process under Ohio court default

judgment and writ of execution thereon sufficiently alleged action under color of state law where plaintiff was challenging constitutionality of Ohio procedures authorizing service by publication * * * 42 USCA § 1983; USCA Const. Amend. 14." Duncan.

1. When Unqualified Judge Larnard Held A 6/26/70 Hearing Without Promised Representation For Nonlawyer Defendant Don, There Was Denial Of Reasonable Access And Due Process Protection Within Prohibition Of The First And Fifth Constitutional Amendments.

"Access to the courts is a 'fundamental constitutional right'." Bounds.

"The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amends. 1,5." Matter.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews.

2.That 6/26/70 Default Judgment Can Be Enjoined Because Nonlawyer Defendant Don Had Not Received Notice Of The Default Action Before There Was A Realistic Opportunity To Appear In Unqualified County Judge Larnard's Court And Protect Interest In Property By Presenting A Meritorious Defense.

A federal court can enjoin the enforcement of state court judgments fraudulently obtained or void for lack of due process. Simon.

"Default judgment violated due process when entered where no realistic opportunity for party to appear in court and protect interest in property by presenting meritorious defense." People v. Braden, Ill..

"[T]he concept of collateral estoppel cannot apply in a subsequent federal action when the party against whom the earlier decision is asserted did not have a full and fair

opportunity to litigate the issue in question in the earlier case." State Judgments.

B. THE ILL-GOTTEN STATE COURTS 1974-94 DISMISSALS OF PETITIONER'S THREE ACTIONS CAN BE COLLATERALLY ATTACKED FOR EXTRINSIC FRAUD.

"Federal district courts have appellate jurisdiction over state courts decisions which can be collaterally attacked for extrinsic fraud." Moffett.

C.THE 1964-67 EVIDENCE OF JOINT VENTURE CONFIDENCE GAME SHOULD BE TRANSMITTED FROM THE STATE'S MUSKEGON COUNTY CIRCUIT AND PROBATE COURTS.

After the 73-C7432-CK 12/9/74 dismissal, the 86-21207-CZ circuit and 86-59607-SE probate cases were precluded under doctrine of res judicata; and federal court may enjoin.

"Federal court may enjoin state proceeding that is precluded under doctrine of res judicata. 28 USC § 2283." Donelan.

"State court exercises concurrent jurisdiction with federal district courts over cases arising under both sections of Civil Rights Act providing for civil action for deprivation of rights and section of Civil Rights Act relating to conspiracy to interfere with civil rights. 42 USCA §§ 1983,1985." Bennum.

State and federal litigations are intended to be supplemental and cumulative. Amer. Pharmaceutical.

D. BOTH THE 1990-98 U.S. DISTRICT JUDGE AND HIS 1998 REPLACEMENT WERE UNQUALIFIED.

"The difference between sections 144 and 455 is that section 455 is self-executing, requiring the judge to disqualify himself for personal bias even in the absence of a party complaint. 'Recusal is mandated . . . only if reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'"

Trotter.

"The determinate of disqualification * * * is what a reasonable person knowing all the relevant facts would think about the impartiality of the judge. 28 U.S.C.A. § 455(a)." Roberts.

"'Fraud on the court' consists of conduct: (1) on part of officer of the court, (2) that is directed to judicial machinery itself, (3) that is intentionally false, wilfully blind to the truth, or in reckless disregard for the truth, that is positive averment or is concealment when one is under duty to disclose, that deceives court." Demjanjuk.

"Fraud upon the court doctrine allows federal court to vacate its own judgment upon proof that fraud has been perpetuated upon the court; courts inherently possess equitable power to preserve integrity of judicial process." U.S. v. Twitty.

"Fraud is 'extrinsic' or 'collateral' within rule authorizing relief from judgment obtained by such fraud when its effect is to prevent an unsuccessful party from having a trial or from fully presenting his case." Fisk.

E. THIS 1990 CIVIL RIGHTS CASE IS NOT CLOSED WHERE THE 12/19/90 RES JUDICATA DISMISSAL OF THE COMPLAINT, NOT THE CASE, AND THE 1/5/94 INJUNCTION MANDATING A MAGISTRATE-ONE JUDGE COURT: (1) WERE IN VIOLATION OF AMEND. 11, 42 USC 1985, 28 USC §§ 455(a),1338(a), 2284(a)(b)(3), PLUS FRCVP 60(b)(6); AND (2) WERE PROCURED AND PROLONGED BY RESPONDENTS' AND JUDGE'S FALSE STATEMENTS-FRAUDS UPON THE COURTS.

"The Eleventh Amendment does not bar actions for money damages arising from constitutional torts committed by state officials who are then sued in their individual capacites in federal court. USCA Const. Amend. 11." Banas.

"Exception to rule that arm and agent of

State also enjoy Eleventh Amendment immunity exists if suit is one challenging constitutionality of a state official's action. USCA Const. Amend. 11." Abick.

"[A] state official is stripped of his official status and subject to the consequences of his conduct when he acts in an unlawful manner." Kelley.

"Where because district court erroneously believed that civil rights actions against state officials were barred by U.S.C.A. Const. Amend. 11, complaints were dismissed without affording opportunity to plaintiffs to submit evidence, * * * dismissal was premature." Scheuer.

"[P]olitical discrimination is prohibited by Sec. 1985. * * * Sec. 1985 reaches discrimination based on political affiliation with racial overtones." Kearing.

"Relief from judgment pursuant to Rule 60(b)(6) should have been granted in case arising over dispute between litigants * * * where * * * Court judge had violated 28 USCS § 455(a), which concerns disqualification of federal judges * * * and judge should have known of circumstances which disqualified him, for lack of impartiality, from hearing dispute." Liljeberg.

"Delay was entirely attributable to judge's inexcusable failure to disqualify himself." Id.

"Equity will set aside a decree in a patent infringement suit." Hazel-Atlas.

"Under * * * 28 USC § * * * 2284(b)(3)], if in fact substantial constitutional question has been presented, single trial judge has no authority to dismiss case." Hartman.

Fraud on court occurs where court is corrupted or influenced or influence is attempted or where judge has not performed his judicial function, i.e., where impartial functions of court have been directly corrupted. Bulloch.

"Rule 60(b) recognizes court's inherent power to grant relief from judgment where court has been subjected to fraud and fraud upon court is matter which is so grave that relief

is afforded without regard to any time limitation." Great Coastal.

"Rule 60(b)(6) applies in 'unusual and extreme situtations where principles of equity mandate relief.'" Ole.

"[R]elief is to be granted only when 'appropriate to accomplish justice.'" Id.

"Rule 60(b)(6) was intended to make available those grounds which equity has long recognized as basis for relief." Bros. Inc.

"Gross negligence or misconduct on the part of counsel has been found in some cases to satisfy the 'exceptional circumstances' requirement." U.S. v. Real.

1. Judge Gibson's 12/19/90 Opinion Issued False Statements That Defendants' Evidence Was Plaintiffs'; Accordingly, The 12/19/90 Judgment Was Viewed In Movants' Favor Rather Than Nonmovant Plaintiffs' favor.

"Evidence is viewed in light most favorable to nonmovant and all reasonable inferences drawn in nonmovant's favor when considering motion for summary judgment. FRCVP 56(c) 28 U.S.C.A." Laborers'.

"Standard for determining whether summary judgment is approprioate is whether the evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law." Wexley.

"For purpose of summary judgment motion, an issue of fact is 'genuine' if evidence is such that reasonable jury could find for the plaintiff." Id.

"Summary Judgment is proper when, viewing evidence in light most favorable to nonmovant, there is no genuine issue as to any material fact." Voinche.

"Summary judgment is reviewed de novo, under the same standards the district court applies to determine whether summary judgment is appropriate. FRCVP 56(c) 28 U.S.C.A." Id.

"Courts may vacate a judgement 'whenever' that action is appropriate to accomplish

justice." Allstate. (Emphasis added).

"Where defendant had only filed motion to dismiss, which is not responsive pleading, plaintiff still had **right** to amend his complaint." Miles. (Emphasis added).

"Where motion to dismiss was granted while plaintiff's motion to amend was still pending, dismissal **must be vacated** since trial court's failure to even consider evidence presented in motion to amend was abuse of discretion." Thompson.

Plaintiff's FRCVP 60(b)(6) motions suspended finality where the Michigan appellate court 1974-94 judgments were not final because an appeal of right with evidence had not yet been held on the 9/28/64-1/6/65 joint venture issue.

"Motion for a new trial **suspends finality** of a judgment." Overbee.

"Where action of Ohio Supreme "Court * * * was unusual occurrence * * * and where * * * the **judgment was not final because evidentiary hearing had not yet been held** * * * on * * * issue, district court abused discretion in not granting the motion. Fed. Rules Civ. Proc. Rule 60(b)(6), 28 U.S.C.A." Id.

"[W]e are of the opinion that the unique facts of this case compel the granting of the motion and accordingly, we hold that the district court **abused its discretion in denying the motion**." Id.

"[I]n our view, at the time the plaintiffs filed the motion, the judgment was **not final**." Id.

"Relief under Rule 60(b)(6) should be provided 'when **substantial justice will thus be served**'." Id.

"[W]here the power of a court of original jurisdiction to set aside a judgment on the ground of fraud is properly invoked, such power is not affected by the fact that the judgment has been * * * affirmed by a reviewing court." Louisville.

"Courts have found a final judgment void * * * if the Court * * * acted in a manner

inconsistent with due process of law." Id, 668.

"In proving damages relating to claim of conspiracy to deprive plaintiff of civil rights * * * plaintiff should have been allowed to present evidence of * * * injuries * * * and losses caused by those injuries sustained. * * * 42 USCA 1985(2,3)." Lenard.

"A federal court has the inherent power to vacate its own judgment upon proof that a fraud has been perpetrated upon the court; this historic power of equity to set aside fraudulently begotten judgments is necessary to the integrity of the courts; moreover, a federal court has the power to conduct an independent investigation in order to determine whether the court has been the victim of fraud." Chambers.

"District court has power to change judgment of appellate court where it is no longer equitable that judgment have prospective application." Bailey.

"Fraud upon the court doctrine allows federal court to vacate its own judgment upon proof that fraud has been perpetrated upon the court; courts inherently possess equitable power to preserve interity of judicial process." U.S. v. Twitty.

F. PETITIONER'S 4TH AMENDED COMPLAINT AND SUBSEQUENT PLEADINGS ALLEGE FACTS FOR WHICH APPLICABLE CONGRESSIONAL ACTS 28 USC §§ 2283,2284 REQUIRE A DUE PROCESS TIMELY MEANINGFUL REVIEW OF CONSTITUTIONAL CLAIMS BY A QUALIFIED DISTRICT JUDGE OR CONVENTION OF A 3-JUDGE DISTRICT COURT:

1. Because a) it is authorized by Acts Of Congress where it is a civil rights action brought under 42 USC § 1985, authorizing suit in equity to redress deprivation, under color of state law, of federal constitutional rights, b) it is an express statuary exception to 28 USC § 2283, and c) it qualifies for an "otherwise" requirement to 28 USC § 2284(a);

2. That this case is an express statuary exception to 28 USC § 2283 because like 42 USC § 1983, it authorizes suit in equity to redress deprivation, under color of state law, of federal constitutional rights;

3. That 42 USC § 1983 authorizes suit in equity to redress deprivation, under color of state law, of federal constitutional rights per Trainor;

4. That this is a challenge to constitutionality of State's bad-faith dual representation lawyer agents' and their clients' denying due process and withholding just compensation;

5. That properties were stolen for public and private use-influencing votes;

6. That State 1970-89 procedures did not afford an adequate forum for vindication of constitutional claims;

7. That State's remedy for vindication of constitutional claims was uncertain;

8. That civil rights class action's contentions were substantial nonfrivolous grounds for vindication of constitutional rights;

9. That Respondents 1990-98 issued false statements-frauds upon the courts-obstruction of justice;

10. That the 1990 Dismissal and 1994 Injunction mandating a magistrate-one judge District Court were grounded on false statements-frauds upon the courts-obstruction of justice; and

11. That both the 1990-98 magistrate-one district judge and its 1998 replacement were unqualified.

G. WHERE THE RESPONDENTS SINCE 6/26/70 CONTINUOUSLY CONSPIRED TO INTERFERE WITH NONLAWYER PETITIONER'S CIVIL RIGHTS, HIS 1990 CIVIL RIGHTS ACTION BROUGHT UNDER 42 USC § 1985 -- AUTHORIZING SUIT IN EQUITY TO REDRESS DEPRIVATION, UNDER COLOR OF STATE LAW, OF FEDERAL CONSTITUTIONAL RIGHTS -- IS AN EXPRESS STATUARY EXCEPTION TO

28 USC § 2283 AND QUALIFIES AS AN "OTHERWISE" REQUIREMENT TO 28 USC § 2284(a).

1. This 42 USC § 1985 Civil Rights Action Is An Express Statuary Exception To 28 USC § 2283 Because, Like 42 USC § 1983, It Authorizes Suit In Equity To Redress Deprivation, Under Color Of State Law, Of Federal Constitutional Rights.

"Civil rights action brought under 42 USCA § 1983, authorizing suit in equity to redress deprivation, under color of state law, of federal constitutional rights, is express statuary exception to 28 USCS § 2283." Trainor.

"State court exercises concurrent jurisdiction with federal district courts over cases arising under both sections of Civil Rights Act providing for civil action for deprivation of rights and section of Civil Rights Act relating to conspiracy to interfere with civil rights. 42 USCS §§ 1983,1985." Bennum.

H. CONSTITUTIONAL CLAIM WAS NOT SUBJECT TO BEING LEFT TO STATE COURTS UNDER DOCTRINE OF ABSTENTION (1) WHERE PROCEDURES CONTAINED THEREIN DID NOT AFFORD SWINDLED-TO-INDIGENCY NONLAWER PUBLIC NIGHTCLUB SERVICER VICTIMS OF STATE LAWYER AGENTS AND THEIR CLIENTS' CONFIDENCE GAME WITH AN ADEQUATE FORUM FOR VINDICATION, AND (2) WHERE STATE REMEDY WITH RESPECT TO FEDERAL CONSTITUTIONAL CLAIM IS UNCERTAIN.

Challenge to constitutionality of Michigan procedures by "just compensation" class of nonlawyer public servicers swindled to indigency by state's bad-faith multi-representation lawyers' and their clients' confidence game was not subject to being left to state courts under doctrine of abstention where the prejudiced state's highest Court's remedy was uncertain and nonlawyers who were denied due process-just compensation

lacked an adequate state forum in which to present their constitutional challenge in that they were restricted in their challenge to such issues as whether there was a contract, conversion, libel & slander action; whether there was a fair trial; whether there should be a waiver or suspension of transcript cost; whether there was no appeal of right; whether decisions were procured and prolonged by frauds upon the courts; and whether two post-judgment independent cases could not be precluded by res judicata.

Petitioners have demonstrated that FRCVP 60(b)(6) plus Act of Congress 28 USCS § 2284(a)(b)(3) require a 3-judge district court in this action against the State, its bad-faith agents: (1) where there were alleged 1970-94 substantial nonfrivolous violations of constitutional rights and abuse of process; (2) where nonlawyer public servicers seek an extraordinary writ to ensure due process-just compensation for their private properties stolen for public and private use-influencing votes; and (3) where there were infirm and inadequate 1990-98 magistrate-one unqualified judge district court procedures and decisions.

> "[C]onstitutional claim was not subject to being left to state courts under doctrine of abstention where * * * procedures contained therein did not afford plaintiffs an adquate forum for vindication of federal constitutional rights." Hernandez.
>
> "Federal court must provide relief despite abstention doctrine where state remedy with respect to federal constitutional claim is uncertain." Id.
>
> "[P]rior state court proceeding does not bar federal court consideration of constitutional claims not actually litigated." Elliott.
>
> "According preclusive effect to unreviewed state administrative determinations is incompatible with full protection of federal

rights by 42 U.S.C.A. Sec. 1983." Id,982.

I. IN A HEARING TO REVIEW CONSTITUTIONAL CLAIM BEFORE A QUALIFIED JUDGE, STATE AND FEDERAL COURT RECORDS PLUS EVIDENCE PRESENTED IN ALL RELATED 1970-98 PROCEEDINGS SHOULD BE IN FILES AND THERE SHOULD BE A DETERMINATION OF ABSTENTION, CONDITIONAL CLASS CERTIFICATION, AND STAY OF STATE-FEDERAL PROCEEDINGS ISSUES BEFORE "OTHERWISE" 3-JUDGE ISSUE.

"District courts are to reach abstention issue first and only determine class certification if dismissal based on abstention is not proper." Hernandez.

"Federal court had authority to stay proceedings in all other courts, federal and state, to prevent inequitable distribution of limited pool of assets after 'limited fund' class action had been conditionally certified in accordance with proposed settlement agreement..." Re Joint Eastern.

"For the purpose of determining substantiality of constitutional question presented by those seeking three-judge court, allegations of the complaint are assumed to be true and it is the contentions of the complaint which are examined." Knight.

"State and federal litigations are intended to be supplemental and cumulative." Amer. Pharmaceutical.

J. ALL SWINDLED-TO-INDIGENCY NONLAWER PUBLIC SERVICER VICTIMS OF STATE LAWYER AGENTS' AND THEIR CLIENTS' CONFIDENCE GAME WOULD HAVE COMMON INTEREST IN PREVENTING UNCONSTITUTIONAL STEALING OF THEIR PROPERTIES FOR PUBLIC USE WITHOUT DUE PROCESS AND JUST COMPENSATION FOLLOWED BY LONGTIME CONTINUOUSLY CONSPIRING TO INTERFERE WITH CIVIL RIGHTS; -- AND CONSTITUTIONAL CLAIM-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS-FEDERAL QUESTION ACTION BROUGHT BY VICTIM WOULD BE MAINTAINABLE AS CONDITIONAL CERTIFIED CLASS ACTION AS TO QUESTION OF DUE PROCESS-JUST

COMPENSATION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS IMPOSED BY DEFENDANTS. "[A]ll inmates would have common interest in preventing unconstitutional mail censorship, and civil rights action brought by plaintiff would be maintainable as class action as to question of mail censorship imposed by defendants." Preston.

K. IN 9TH YEAR OF PRETRIAL PROCEEDINGS WHEN PRO SE NONLAWYER'S APPLICATION FOR A 3-JUDGE COURT WAS RE-RE-REFUSED BY THE MAGISTRATE-ONE UNQUALIFIED JUDGE DISTRICT COURT WHICH ALSO 10/26/98 REFUSED TO CERTIFY INTERLOCUTORY APPEAL UNDER 28 USCS § 1292(b), NONLAWYER WAS JUSTIFIED IN 10/28/98 PETITIONING FOR A WRIT OF MANDAMUS FROM THE COURT OF APPEALS.

1. The 1990-98 District Court Demonstrated A Clear Abuse Of Discretion Or Conduct Amounting To Usurpation Of Judicial Power.

The 1990-98 Judge Gibson issued false statements-frauds upon the courts, then covered up-obstructed justice by transmitting essential portions of the record to the Chicago archives.

Then the 1998 replacement Judge Hillman issued decisions not to remedy Judge Gibson's failure to uphold the constitution. See Mallard.

"Where it appeared that there had been a substantial delay * * * mandamus would issue..." Pioche.

"Where a single judge refuses to request the convention of a three-judge Federal District Court, but retains jurisdiction, review of his refusal may be had in the Court of Appeals either through petition for writ of mandamus or through a certified interlocutory appeal under 28 USCS § 1292(b) ..." Gonzalez.

"The district court has not performed a lawful exercise of its prescribed jurisdiction or exercised its authority when it was its duty to do so." Roche.

"[A] function of mandamus in aid of appellate jurisdiction is to remove obstacles to appeal." Id.

L. THE SUPREME COURT SHOULD UPHOLD THE FEDERAL CONSTITUTION AND LAWS OVER COMITY, FEDERALISM, AND INFIRM RULINGS OF THE MAGISTRATE-ONE UNQUALIFIED JUDGE DISTRICT COURT PLUS THE PREJUDICED COURT OF APPEALS.

1. Waivers Should Be Received From The Respondent 3 Johnsons Regarding Their Multi-Representation Attorneys With Conflicting Interests.

"When a trial court learns that an attorney might be representing conflicting interests, the court must investigate further, advise the defendant of the potential conflict, and receive a waiver if that is the expressed wish of the defendant." U.S. v. Ross.

"Potential, no less than actual, conflict disqualifies counsel from serving in a double capacity." Int'l Brotherhood.

2. There Should Be A Determination Whether This Is A Civil Or Criminal Case.

"The gist of the crime of conspiracy is the unlawful agreement." Roll.

"[P]laintiffs brought this action alleging that they were bilked by Fletcher's confidence game." Davis.

"Based on the jury's findings, the district court awarded the plaintiffs $3,587,272 in damages. The court adjudged each defendant jointly and severally liable for certain portions of the judgment, and apportioned liability for the remainder. Finally, the district court, finding authority in both RICO and the Ohio CSFA awarded the plaintiffs $951,307.72 in attorneys' fees and expenses." Id.

"The focus of a civil conspiracy claim is the damage, not the conspiracy itself." Mercer.

"Whether a case is brought on the civil or criminal side of the docket, the actional conduct is deprivation of rights secured by the Constitution or laws of the United States.

The culpable intent will vary from willfulness of a criminal charge to something less in a civil complaint, and it may vary according to the particular constitutional right infringed." U.S. v. Lanier.

II.THE CHIEF JUSTICE MUST RECUSE HIMSELF FROM THIS PROCEEDING.

The U.S. Supreme Court has been prejudiced where Chief Justice William Renquist's late brother-in-law was Petitioner's former schoolmate who 1965-71 used Petitioner to evade nightclub land sellers' $25,000+ federal tax lien while he was member of the 1964-69 LANDMAN HATHAWAY GRIMM & LAURIN partnership: (1) which represented Petitioner and the Respondent 3 Johnsons BUYERS, (2) which represented SELLERS of the jointly-purchased Musikist nightclub land and building. (3) which represented perpetrator HACKLEY UNION NATIONAL BANK & TRUST CO. which issued the infirm 2/9/65 Trust Agreement which disguised Petitioner's family joint venturer Respondent Richard G. Johnson as a moneylender to Petitioner, [129a] (4) which represented the MUSKEGON CHRONICLE, which libeled Petitioner dba Musikist nightclub by publicizing unpaid property taxes among nightclub advertisements, and (5) which 1969 merged with perpetuator Respondent 1969-93 LANDMAN LATIMER CLINK & ROBB partnership which likely incorporated in 1993, then prematurely dissolved while this action was still pending.

Chief Justice William P. Rehnquist may have a stake in the outcome of this case where 1964-65 perpetrator LANDMAN GRIMM BRADBURY & LAURIN (including his late brother-in-law) 1969 merged into Respondent perpetuator LANDMAN LATIMER CLINK & ROBB partnership which should be held jointly and severally accountable in this nonclosed district court case

nos. 90cv175 and 1:90cv175.

"Any justice * * * of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 USC § 455(a).

"The stockholder's derivative action is an invention of equity to supply the want of an adequate remedy at law to redress breaches of fiduciary duty by corporate managers, who usually also possess the control which enables them to suppress any effort by the corporate entity to remedy such wrongs." Koster.

"A fair trial, as required by due process, requires not only an absence of actual bias on the part of the judge, but also that no man be a judge in his own case or try cases where he has an interest in the outcome." Re Murchison.

"The determinate of disqualification * * * is what a reasonable person knowing all the relevant facts would think about the impartiality of the judge. 28 U.S.C.A. § 455(a)." Roberts.

"The United States Supreme Court hold allegations of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers." Haines.

RELIEF

THIS U.S. SUPREME COURT MUST UPHOLD THE CONSTITUTION AND ACTS OF CONGRESS BY GRANTING THIS PETITION FOR A WRIT OF MANDAMUS TO THE COURT OF APPEALS WHICH MUST ISSUE A WRIT OF MANDAMUS TO THE DISTRICT COURT WHICH WOULD PURSUANT TO FRCVP 60(b)(6):

1. Declare that this case nos. 90cv175 and 1:90cv175 is not closed;
2. Assign neither Judge Gibson or Judge Hillman to further proceedings in this matter;
3. Ensure that the complete 1990-98 record is in the current files;
4. Get waivers from the Respondent 3 Johnsons regarding their attorneys with conflicting interests;

5. Review the record for frivolousness and insubstantiality of constitutional claims;

6. Rescind the 1990 order protecting defendants from answering plaintiff's Request For Admissions;

7. Determine whether this is a civil or criminal case;

8. Hold a hearing to determine abstention, conditional certification of "due process-just compensation" class, stay of state-federal proceedings, and three-judge district court issues; -- OR IN THE ALTERNATIVE, convene a three judge district court pursuant to "otherwise" requirement of 28 USC § 2284(a)(b)(3) where 42 USC § 1985 is an express statuary exception to 28 USC § 2283 and this case shall not be dismissed by a one judge district court.

CERTIFICATE

I, Donald Edgar Johnson, do solemnly swear: (1) that, contrary to her fraud upon the courts 4/62 Pennsylvania Vanango County divorce, my 2/54-4/62 cheating dishonest wife by Michigan Protestant marriage, Wanda Lee Kiskadden Johnson, abused[11] and deserted me, her minor children, and all of her marital assets including my Kandy phono records-music publishing businesses, 5/60-4/62; (2) that since early 1996 when I broke off any contact with Randy, I am absolutely positive that my cousin, Muskegon's James McCormick -- not me -- is the real and biological father of Randy Van Johnson (Oshkosh,Wisc- 6/6/56); (3) that my receiving $30,000 plus interest in 1990 as 10% of Respondent Carl-Sr's $448,000+ undervalued 1986 estate represented by Respondent O'TOOLE firms <u>was</u> <u>**absolutely NOT**</u> the <u>constitution-mandated</u> "just compensation" required in Don's $2-million+ 73-C7432CK lawsuit which Michigan Supreme Court repeatedly denied

leave to appeal because "we are not persuaded that the questions presented should be reviewed by this court"; (4) that I have never been compensated for my confidence game-stolen private substantial corporate and personal properties including my Kandy Tapes & Records Corp.(Amer.Fed. Musicians of U.S. and Canada) with stereo tapes/records that made Billboard Top 10 plus other charts' #1 best sellers, my Kandy Music Publishers (BMI) with copyrighted music, my Travelite mobile home-office-studio, my 334 Waterview, N. Muskegon, Michigan lakeside homestead, my 6½ years 1965-73 100 hours weekly skilled labor wages, and my 29 years 1970-99 thousands of hours and dollars expended in pursuit of impartial justice without resorting to violence against Respondents' 29 years ongoing conspiracy to interfere with my civil rights; (5) that irreparable damages and infirm/inadequate Michigan state and federal courts procedures require this Court's supervisory power; (6) that I will conduct myself uprightly and according to law; (7) that relief is not available in any other form or any other court; and (8) that I will support the Constitution of the United States.

Executed on March 9, 1999.

DONALD EDGAR JOHNSON (1943-47 Pvt 36457669 + US Army Lieutenant 01951488), In Pro Per
Counsel For Petitioners
1657 S. Getty/1976 Motorhome
P.O. Box 5407
Muskegon, MI 49445
Phone Installation Avilable

n1 See Paul & Dorothy Schultz hand-written proof of wife's child abuse-desertion: 73-C7432-CK trial.

APPENDIX

APPENDIX A: 4/19/90 - 11/9/98 OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW ENTERED IN CONJUNCTION WITH THE 11/9/98 JUDGMENT SOUGHT TO BE REVIEWED.

4/19/90 ENTERED District Judge Benjamin F. Gibson Granted Don's Motion To Extend Time To Reply To 7 Defendants' Motions For Dismissal And Summary Judgment:

"U.S. DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION FILED APR 17 1990

DONALD EDGAR JOHNSON,
Plaintiff, HON. BENJAMIN F. GIBSON
v. FILE NO. 1:90 CV 175
RICHARD GORDON JOHNSON, et al.,
Defendants. ORDER

At a session of the Court held in and for said District and Division in the City of Grand Rapids, Michigan, this 17th day of APRIL, 1990.

PRESENT: HON. BENJAMIN F. GIBSON, DISTRICT JUDGE

This matter having come before the Court pursuant to the Plaintiff in Pro Per's Motion for More Time to Reply filed by plaintiff, and the Court having reviewed said motion and othewise being fully advised in the premises;

IT IS HEREBY ORDERED that said request is GRANTED. The plaintiff has until April 30, 1990 to file his reply to defendants motions for dismissal and summary judgment.

IT IS SO ORDERED. s/BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE".

5/14/90 "UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DONALD EDGAR JOHNSON, FILED 5/8/90
et al, Case No. 1:90cv175
Plaintiffs, Hon. Benjamin F. Gibson
vs
RICHARD GORDON JOHNSON, et al,
Defendants.

ORDER DENYING MOTION FOR
LEAVE TO AUDIO RECORD

Plaintiffs having filed a motion for leave to audio record and the court having this date heard arguments thereon,

Upon due consideration, the motion is DENIED. W.D.Mich. R. 25.

IT IS SO ORDERED.

Entered: 5/7/90 S/hugh W. Brenneman, Jr.
U.S. Magistrate"

5/16/90 "UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGA N

DONALD EDGAR JOHNSON, Docket No. 1:90cv175
Plaintiff, HUGH W. BRENNEMAN, JR.
U.S. MAGISTRATE

VS

RICHARD GORDON JOHNSON, et al,
Defendants.

ORDER

On Monday, May 7, 1990, at 10:30 a.m. a Hearing was held on Plaintiff's April 16, 1990, Motion to Amend his Complaint. At the time of said Hearing, Plaintiff indicated a desire to put forth a second Amended Complaint dated April 30, 1990, and a third Amended Complaint dated May 5, 1990. The Court having found that Defendants' had not had proper opportunity to respond to the proposed April 30, 1990 Amendment as well as the proposed May 5, 1990 Amendment, the Court denies Plaintiff's Motion to Amend for the reason that Plaintiff no longer desires to put forth his first Amended Complaint.

THEREFORE, IT IS ORDERED that for the convenient administration of justice, Plaintiff is directed to consolidate his first proposed Amended Complaint, second proposed Amended Complaint and third propposed Amended Complaint into one consolidated document to be deemed his proposed Fourth Amended Complaint. Thereafter Plaintiff may submit his poposed fourth Amended Complaint and bring it on by Motion as provided by the Federal Rules of Civil Procedure.

IT IS ORDERED for the aforegoing reasons

that Plaintiff's Motion on his proposed first, second and third Amended Complaints as denied without prejudice to Plaintiff filing his Motion to allow his fourth Amended Complaint. S/HUGH W. BRENNEMAN, JR., U.S. MAGISTRATE"

5/30/90 "UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DONALD EDGAR JOHNSON, Plaintiff, v RICHARD GORDON JOHNSON, et al, Defendants.

FILED 5/16/90 pm 3:04
Docket No. 1:90cv175
HUGH W. BRENNEMAN, JR.
U.S. MAGISTRATE

ORDER

On Monday, May 7, 1190, at 10:30 a.m. a Hearing was held on Plaintiff's April 16, 1990, Motion to Amend his Complaint. At the time of said Hearing, Plaintiff indicated a desire to put forth a second Amended Complaint dated April 30, 1990, and a third Amended Complaint dated May 5, 1990. The Court having found that Defendants' had not had proper opportunity to respond to the proposed April 30, 1990 Amendment as well as the proposed May 5, 1990 Amendment, the Court denies Plaintiff's Motion to Amend for the reason that Plaintiff no longer desires to put forth his first Amended Complaint.

THEREFORE, IT IS ORDERED that for the convenient administration of justice, Plaintiff is directed to consolidate his first proposed Amended Complaint, second proposed Amended Complaint and third proposed Amended Complaint into one consolicated document to be deemed his proposed fourth Amended Complaint. Thereafter Plaintiff may sumit his proposed fourth Amended Complaint and bring it on by Motion as provided by the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED for the aforegoing reasons that Plaintiff's Motion on his proposed first, second and third Amended complaints as denied without prejudice to Plaintiff filing his Motion to allow his fourth Amended Complaint. S/HUGH W. BRENNEMAN, JR., U.S.

MAGISTRATE."

6/13/90 Don Was Ordered To Proceed On His 4th Amended Complaint:

"U.S. DISTRICT COURT-WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION FILED 6/7/90

DONALD EDGAR JOHNSON,

Plaintiff, Case No.1:90-CV-175 Hon. Benjamin F. Gibson

V.

RICHARD GORDON JOHNSON, et al,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION TO FILE FOURTH AMENDED COMPLAINT

"Plaintiffs having filed a motion to proceed on plaintiffs' proposed fourth amended complaint and the Court having heard arguments thereon,

The motion to file a fourth amended complaint is GRANTED pursuant to Hearing dated June 4, 1990. FRCP 15.

IT IS SO ORDERED.

Entered 6/5/90. s/Hugh W. Brenneman, Jr., United States Magistrate" (Emphasis added).

6/12/90 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DONALD EDGAR JOHNSON, Case No. 1:90cv175

V NOTICE

RICHARD GORDON JOHNSON, et al,

* * * CIVIL * * * TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET * * *MONDAY, JUNE 25, 1990 at 10:00 a.m. * * * **HEARING: MOTION FOR PROTECTIVE ORDER MOTION TO DISQUALIFY CULVER AND O'TOOLE LAW FIRMS** * * * HUGH W. BRENNEMAN JR. * * * To Attorneys of Record ... (Emphasis added).

6/13/90 "UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION FILED 6/7/90

DONALD EDGAR JOHNSON, Et Al., Case No. 1:90CV175

Plaintiffs, Hon. Benjamin F. Gibson

vs

RICHARD GORDON JOHNSON, Et Al.,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION TO FILE FOURTH AMENDED COMPLAINT

Plaintiffs having filed a motion to proceed on plaintiffs' proposed fourth amended complaint and the Court having heard arguments thereon.

The motion to file a fourth amended complaint is GRANTED pursuant to Hearing dated June 4, 1990. FRCP 15.

IT IS SO ORDERED.

Entered: 6/5/90 S/HUGH W. BRENNEMAN, Jr United States Magistrate."

6/25/90 Magistrate's Denial At The Onset Of Pretrial Proceeding Of Plaintiffs' 5/18/90 Motion To Stop Culver and O'Toole Law Firms' Dual Representation Of (1) Public Nightclub Sellers, And (2) Don's Father And Two Brothers (Three Johnsons) Joint Venturers Law Firms-Disguised-As-Moneylenders Buyers — While Granting Defendants' Motions For Protective Orders Staying Don's Requests For Admissions Until District Judge Ruled On Respondents' Motions To Dismiss:

P62 "THE COURT: No, Mr. Hipkiss didn't write this, Mr. Johnson. It says on the bottom, "The above documents were given to me by Attorney William Hipkiss." and it's signed by Donald Johnson. He didn't prepare this. You did. * * *

THE COURT: Well the last bit is written in the same handwriting as the entire rest of the document with the exception of the signature, which is Donald E. Johnson. That's written in a different handwriting. * * *

P73 THE COURT: * * * I will grant the motions to stay and will further stay any other discovery in this matter pending resolution of Judge Gibson's * * * decision on the motions to dismiss. * * *

THE COURT: I haven't ruled on that motion yet. I've taken that under advisement." Magistrate's 6/25/90 Hearing pp 31-74.

7/10/90 Magistrate's Order Postponing The Stopping Of Law Firms' Dual Respresentation While Granting Defendants' Motions For Protective Orders.

"ORDER (2 pgs) by Magistrate Hugh W. Brenneman Jr. granting deft lawfirms' motions for protective order [53-1] [51-1] & taking pltf's motion to disqualify the Culver & O'Toole Law Firms defts from representing the Johnsons defts [45-1] under advisement and will be ruled on at such other time as deemed appropriate by the Court..." DC Docket No. 77.

12/5/90 District Judge Gibson's Dispositive Hearing:

"...Mr. Johnson * * * you have made your position clear today this morning. What I'm going to have to do is sort through the arguments and the record and the pleadings and the briefs and make a judgment on the various motions pending before the Court * * * any subsequent papers filed will not be considered. I'm only going to consider what's before the Court now. So it won't do any good to file any additional pleadings because they will not be considered. I have all I need before me now to decide these motions. So hopefully within the next two weeks we won't have any additional pleadings filed because they will not be considered.

The Court will take the matter under advisement and issue an opinion on all relevant pending motion. Thankyou." 12/5/90 Depositive Hearing Before Judge Gibson pp 23,25.

12/19/90 District Judge's WITHOUT DUE PROCESS Opinion Based On FRAUD UPON COURT That Plaintiffs' Evidence Was Defendants' Deceptive Evidence:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON,
Plaintiff,

FILED 12/18/90
File No. 1:90-CV-175
Hon. BENJAMIN F. GIBSON

RICHARD GORDON JOHNSON, et al.,
Defendants.

OPINION

"This civil rights action alleging a

violation of Title 42 United States Code Section 1985 is the latest chapter in the continuing saga of Donald Edgar Johnson's dispute with his brothers, their father, their attorneys, the State of Michigan, and Michigan Court of Appeals Judge Robert J. Danhof. Pending before the Court are various motions to dismiss this matter as well as various motions filed by the plaintiff.

A dispute arose between the plaintiff, Donald Edgar Johnson, and his father and brothers sometime in the mid-1960s. The dispute led to litigation and a trial was held by the Muskegon County Circuit Court. A judgment adverse to the plaintiff was entered by that court on December 9, 1974. The plaintiff failed to perfect a timely appeal with the Michigan Court of Appeals. Thereafter, the plaintiff unsuccessfully petitioned the circuit court on several occasions for relief from the December 9, 1974 judgment.

Unlike most unsuccessful litigants, the plaintiff refused to accept the fact that he had lost his case. Rather, with a degree of perseverance rarely seen in even pro se litigants, he has sought to collaterally attack the merits of the circuit court judgment in a number of forums.

The plaintiff, apparently to support the merits of this action, has compiled for the Court what appears to be all of the orders entered by this court and others in response to his quizotic attempts to have the original circuit court decision vacated.[1] This compilation reveals that numerous appeals have been presented by the plaintiff to the Michigan Supreme Court and Court of Appeals.[2] It also reveals that all of these appeals were summarily denied. The plaintiff's dossier also contains the denial of a petition for certiorari by the United States Supreme Court. Furthermore, it indicates that following the death of his father, a defendant in the original circuit court action, the plaintiff unsuccessfully attempted to collaterally attack the original judgment by filing a claim against the estate

and appealed the dismissal of his claim without success. Finally, the dossier also indicates that this Court has rejected the plaintiff's allegations on at least three other occasions and that these decisions were affirmed by the Sixth Circuit.

All of the defendants argue that the plaintiff's latest attempt to attack the circuit court judgment is, like the previous ones, barred by the doctrine of res judicata. This doctrine 'is founded upon the generally redognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and the contested issue is decided against him, he may not later renew the litigation in another court.' Heiser v. Woodruff, 327 U.S. 726,733 (1946). Thus, a judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. E.G., Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394,398 (1981). Moreover, even if a party believes that a judgment was blatantly incorrect, he may not commence a second action. Rather, he must seek appellate review of the matter.

After reviewing the pleadings in this matter, the Court believes that the plaintiff's 'civil rights' complaint is simply the latest attempt to attack the judgment entered by the circuit court back in 1974. The doctrine of res judicata prohibits such an attack. Therefore, the defendants' motion to dismiss are granted and the plaintiff's fourth amended complaint is dismissed with prejudice.

Furthermore, the Court strongly advises the plaintiff, as other have in the past, that this litigation is over and his attempts to overturn the decision of the circuit court are futile. Unfortunately, given the number of times this matter has been presented to this Court and others in the past sixteen years, the Court believes that the plaintiff will not heed this advise. Therefore, the plaintiff will be enjoined from submitting any further

documents or pleadings regarding this matter with this Court and the Court's clerk will be enjoined from accepting such documents or pleadings from him.

DATED: December 18, 1990.

s/BENJAMIN F. GIBSON,
U.S. DISTRICT JUDGE.

1. The dossier contains eighty orders that have been issued by seven different courts.

2. According to the plaintiff, one of the orders issued by the Michigan Court of Appeals permitted him to file an independent action alleging fraud upon the Court. See Mich. Ct. R. 2.612(C)(3), 7.206(B)(3). Following the entry of that order, the plaintiff filed such an action in the Muskegon County Circuit Court against his father and brothers. The trial court granted the defendants' motion for summary disposition and dismissed the complaint. The dismissal was affirmed by the Michigan Court of Appeals on appeal and the Michigan Supreme Court declined to review the case."

12/19/90 District Judge's FRAUD UPON COURTS C-O-M-P-L-A-I-N-T Dismissal Based Upon FRAUD UPON COURTS 12/19/90 Opinion That Defendants' Evidence Was Plaintiffs'.

It Barred Attack Grounded On Extrinsic Fraud On County Circuit Court 1973-89 Pltf vs 3 Johnsons Case No. 73-C7432-CK 1974 Partial Trial's Dismissal Without Due Process Appeal Of Right-With Evidence Or Review Of Constitutional Claims, Denied All Of Pltf's Motions, And Granted Defts' Motions For 11th Amendment Immunity Plus Summary Res Judicata Disposition Of 4th Amended Complaint:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON,
Plaintiff,

FILED 12/18/90
File No. 1:90-CV-175
Hon. BENJAMIN F. GIBSON

RICHARD GORDON JOHNSON, et al.,
Defendants.

JUDGMENT

At a session of the Court held in and for said District and Division, in the City of Grand

Rapids, Michigan, this 18th day of December, 1990.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED that the defendants' motions to dismiss are GRANTED and the plaintiff's complaint is DISMISSED with prejudice.

IT IS FURTHER ORDERED that all motions filed by the plaintiff are DENIED.

IT IS FURTHER ORDERED that the Clerk of the United States District Court for the Western District of Michigan is ENJOINED from accepting from the plaintiff any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK.

IT IS FURTHER ORDERED that the plaintiff is ENJOINED from filing any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK. Failure to comply with this Order on the part of the plaintiff may result in a finding that he is in contempt of this Court.

IT IS SO ORDERED.

s/BENJAMIN F.GIBSON, U.S. DISTRICT JUDGE"

(Emphasis added).

7/29/91 Resulted Court Of Appeals' Erroneous Affirmation Of District Judge's So-Called "Action" Dismissal Based On Court Of Appeals' Erroneous Opinion That 12/19/90 Res Judicata Dismissal Was For Failure To State Claim:

"No. 91-1160

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON — Filed 7/29/91

Plaintiff-Appellant

v.

O R D E R

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; THE ESTATE OF CARL A. JOHNSON, SR.; THE LAW FIRM PARTNERSHIP OF LANDMAN, LATIMER, CLINK AND ROBB; CULVER, LAGUE AND MCNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON AND ROLF, STATE OF MICHIGAN, O'TOOLE, JOHNSON, POTTER, ROLF,

GRAFTON AND EKLUND, P.C.; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge,
Defendants-Appellees.

NOT RECOMMENDED FOR FULL TEXT PUBLICATION

* * *

BEFORE: KEITH and NORRIS:, Circuit Judges, and WEBER, District Judge.

Donald Edgar Johnson, a pro se Michigan citizen, appeals the district court's judgment dismissing his action filed pursuant to 42 U.S.C. § 1985 for failure to state a claim. * * * Seeking monetary relief, Johnson sued the estate of his father, his brothers, several law firms, and a state court judge. Johnson alleged that the defendants had conspired against him during various state and federal court proceedings. The district court determined that Johnson's claims were barred by res judicata and dismissed the case for failure to state a claim. Johnson has filed a timely appeal.

Upon review, we determine that the district court properly dismissed Johnson's case for failure to state a claim. Construing the complaint in the light most favorable to Johnson, and accepting all the factual allegations as true, we determine that Johnson undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. * * * Accordingly, we affirm the judgment for the reasons set forth in the district court's judgment filed on December 18, 1990...

*The Honorable Herman J. Weber, U.S. District Judge for the Southern District of Ohio, sitting by designation." (Emphasis added).

1/21/92 "Rhenquist" Supreme Court DENIED Certiorari To 6th Circuit Court Of Appeals No. 91-1160 Decision That Was Procured By Defendants' FRAUD UPON COURTS.

4/17/92 District Judge Gibson's FRAUD ON COURTS Order That 12/19/90 Judgment Dismissed The Case While DENYING DUE PROCESS-EQUAL PROTECTION FRCVP 60(b)(5(6) Evidentiary Hearing For Determining That The 12/19/90 Judgment Was

Procured And Prolonged By Frauds Upon The Courts. Note erroneous entry of 12/18/90 rather than 12/19/90 and erroneous FRCP 60(b) one year time limit:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

DONALD EDGAR JOHNSON, et al, FILED 4/16/92

Plaintiffs Case No. 1:90CV175

vs Hon. Benjamin F. Gibson

RICHARD GORDON JOHNSON, et al,

Defendants.

ORDER REJECTING PLEADINGS

Judgment in this action was entered December 18, 1990 granting defendants' motion to dismiss the complaint. Plaintiff subsequently appealed to the United States Court of Appeals for the Sixth Circuit and the decision of this court was affirmed. The Supreme Court therafter apparently denied plaintiff's petition for a writ of certiorari, and on March 9, 1992, denied plaintiff's petition for rehearing.

Plaintiff now seeks to file in this court an emergency motion for an evidentiary hearing to determine if defendants perpetrated a fraud on the court(s) by mischaracterizing the nature of the plaintiff's evidence prior to the December 18, 1990 judgment and thereafter. Plaintiff has also attempted to file four supplements in his emergency motion which he seeks to file.

Plaintiff's emergency motion and the supplements to it will not be accepted for filing, since a final judgment has already been entered dismissing this action and the case is no longer pending in this or any other federal court, Rule 12(f), Federal Rules of Civil Procedure; W.D. Mich. L.R.24(b).

To the extent tha plaintiff may seek to construe this as a Rule 60(b) motion challenging this court's December 18, 1990 judgment, it is untimely. Such motions when predicated on 'fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party' must be made within one year. Rule 60(b), FRCP.

The court notes that the plaintiff contends that he was prohibited from filing a motion to reconsider the December 18, 1990 judgment, at the time it was entered, due to the injunctive language in the judgment prohibiting him from collaterally attacking a previous state court judgment. A careful reading of that language, however, clearly shows that it did not preclude plaintiff from taking further action under the Federal Rule of Civil Procedure regarding his federal case. (Indeed, if plaintiff really believed that he had been barred from filing anything further in regard to his federal case, he would not have filed the present motion).

Upon due consideration, plaintiff's motion and supplementary material are not accepted for filing in this court.

IT IS SO ORDERED.

Dated: April 16, 1992 s/BENJAMIN F. GIBSON, Chief Judge".

5/8/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 5/7/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: April 27, 1992

PLEADING TITLE/FILER: Filed by plaintiff - Emergency motion for change in venue and in the alternative, to alter the order denying a Rule 60(b)(5)(6) evidentiary hearing to defendants' 19901992 frauds upon the courts with brief.

REASON: A final judgment has been entered dismissing this action and the case is no longer pending in this or any other federal court.

If the offering party wishes to resubmit

a corrected pleading, a copy of this order must accompany the resubmitted pleading.

IT IS SO ORDERED.

DATED: 5/6/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

5/22/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 5/21/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: May 12, 1992

PLEADING TITLE/FILER: Supplement To Reply To Petition To Determine Distribution Has Been Made/Johnson

REASON: The cover letter refers to case number 1:90cv175. The pleading refers to file number 86-59607-SE of State of MI Probate Court, Muskegon County. Case number 1:90-cv-175 is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

IT IS SO ORDERED.

DATED: 5/21/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

5/26/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 5/22/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted

below:
DATE RECEIVED: May __. 1992
PLEADING TITLE/FILER: Filed by plaintiff - Emergency motion to strike
REASON: This case is closed. A final judgmet has been entered dismissing this action and the case is no longer pending in this court. The court will retain the original of this motion and return the copy.
IT IS SO ORDERED.
DATED: 5/22/92. s/BENJAMIN F. GIBSON,
U.S.Chief District Judge"

6/3/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
DONALD EDGAR JOHNSON, FILED 6/2/92
Plaintiff Case No. 1:90cv175
V ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants
The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:
DATE RECEIVED: May 26, 1992
PLEADING TITLE/FILER: Plaintiff's emergency motion for declaratory judgment
REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.
IT IS SO ORDERED.
DATED: 6/2/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

FILED 6/5/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
DONALD EDGAR JOHNSON, FILED 6/5/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants
The Court has examined the following proposed pleadings(s) and orders the Clerk to reject

the proposed pleadings(s) and to return it to the offering party for the reasons noted below:
DATE RECEIVED: June _ 1992
PLEADING TITLE/FILER: Plaintiff's supplement to emergency motion for declaratory judgment
REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.
IT IS SO ORDERED.
DATED: 6/5/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

FILED 6/5/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 6/5/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:
DATE RECEIVED: June _ 1992
PLEADING TITLE/FILER: Plaintiff's 2nd supplement to emergency motion for declaratory judgment
REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.
IT IS SO ORDERED.
DATED: 6/5/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

FILED 6/8/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 6/8/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject

the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: June _ 1992

PLEADING TITLE/FILER: Plaintiff's motion for injunction

REASON: No brief was attached and this case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

IT IS SO ORDERED.

DATED: 6/8/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

6/29/92 ENTERED "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 6/!5/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: June _ 1992

PLEADING TITLE/FILER: Plaintiff's motion for injunction (second time) and no brief attached.

REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

DATED: 6/15/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

7/8/92 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 6/29/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:
DATE RECEIVED: June _ 1992 or July _ 1992
PLEADING TITLE/FILER: Plaintiff's petition to determine that law firms are unqualified and decedent was joint venturer disguised as moneylender and reply to response to claimant Donald Edgar Johnson's motion for rehearing filed by plaintiff because this case is closed; A final judgment has been entered dismissing this action and the case is no longer pending in this court.
IT IS SO ORDERED.
DATED: 7/8/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

7/8/92: "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 7/6/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:
DATE RECEIVED: July _ 1992
PLEADING TITLE/FILER: Plaintiff's Claimant Heir Donald Edgar Johnson's Request for Admissions, Genuineness of Documents and Truth of Facts
REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.
IT IS SO ORDERED.
DATED: 7/6/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

7/9/92: "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 7/8/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: July _ 1992
PLEADING TITLE/FILER: Plaintiff's Supplement to Claimant Heir Donald's Request for Admissions, Genuineness of Documents and Truth of Facts
REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

IT IS SO ORDERED.
DATED: 7/8/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

7/9/92: "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 7/8/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: July _ 1992
PLEADING TITLE/FILER: Reply To Answer to Claimant Heir Donald Edgar Johnson's Request for Admissiona, Genuineness of Documents and Truth of Facts
REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

IT IS SO ORDERED.
DATED: 7/6/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

7/14/92: "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 7/13/92
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: July _ 1992
PLEADING TITLE/FILER: Claimant-Heir Donald Johnson's response to Culver Lague & McNally Motion for Summary Disposition REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

IT IS SO ORDERED.
DATED: 7/6/92. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

12/23/92 Initial Court of Appeals #92-1829 Decision Showing: (1) Wrong Caption, and (2) 1964-67 PERPETRATOR 6th Circuit Judge Albert J. Engel Perpetuated The 1964-97 Ongoing Confidence Game By Intervening As Decisionmaker:

No. 92-1829

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON and Class of
Pro Se Nonlawyer Alleged
Confidence Game Victims,

FILED DEC 23, 1992
Plaintiff-Appellant, Leonard Green, Clerk

V.

RICHARD GORDON JOHNSON, jointly and severally: CARL ALFRED JOHNSON, JR., jointly and severally; CARL A. JOHNSON, SR., the Estate of, jointly and severally; THE LAW FIRM PARTNERSHIPS OF

LANDMAN, LATIMER, CLINK AND ROBB, jointly and severally; CULVER, LAGUE AND MCNALLY, jointly and severally; O'TOOLE, STEVENS, JOHNSON, KNOLWTON AND ROLF, jointly and severally; STATE OF MICHIGAN, jointly and severally; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON AND EKLUND, P.C., jointly and severally; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge

Defendants-Appellees.

BEFORE: KENNEDY AND BATCHELDER, Circuit Judges and ENGEL, Senior Judge.

"Plaintiff, Donald Edgar Johnson, a pro se Michigan citizen, moves for miscellaneous relief on appeal from three separate district court orders rejecting various pleadings filed subsequent to a final judgment entered December 19, 1990, dismissing plaintiff's civil action filed pursuant to 42 U.S.C. § 1985. Plaintiff also appeals an order from the Muskegon County Probate Court. Additionally, the defendants have filed motions to dismiss the appeal for lack of subject matter jurisdiction. The defendants also request costs and attorney fees. Plaintiff has filed a response. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Plaintiff initiated his civil action against the estate of the father, his two brothers, several law firms, and a Michigan state court judge, claiming that the defendants conspired against him through various judicial processes in the state and federal courts since 1974. The district court determined that plaintiff's claims were barred by res judicata and dismissed plaintiff's complaint for failure to state a claim. This court affirmed the district court's judgment in an order filed Jujly 29, 1991 and denied plaintiff's petition for rehearing en banc in an order filed September 2, 1991. On January 21, 1992, the United States Supreme Court denied certiorari.

Thereafter on April 27, 1991, the district

court received a pleading entitled, "Emergency Motion For Change In Venue; And In The Alternative, To Alter The Order Denying A Rule 60(b)(6) Evidentiary Hearing Re Defendants' 1990-1992 Frauds Upon The Courts." On May 8, 1992, the district court entered an order rejecting the pleading for the reason that a final judgment had been entered dismissing plaintiff's action.

On May 12, 1992, the district court received a pleading entitled, "Supplement To Reply To Petition To Determining Distribution Has Been Made." The district court rejected this pleading in an order entered May 22, 1992, also for the reason that a final judgment had been entered dismissing plaintiff's case. Finally, on May 26, 1992, the district court received a pleading entitled, "Emergency Motion For Declaratory Judgment." On June 3, 1992, the district court entered an order rejecting this pleading for the same reason as stated in the print orders of May 8, 1992 and May 22, 1992.

We construe this appeal as an appeal from three separate district court orders denying plaintiff relief sought pursuant to Fed. R. Civ. P. 60(b). An abuse of discretion standard applies to a decision rendered under Rule 60(b). In re Sales Mortg. Co., 791 F.2d 456, 459 (6th cir. 1986); Smith v Secretary of Health and Human Services, 776 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 6, 7 (6th Cir. 1984) (per curiam0; Reviewing courts will find an abuse of discretion in the denial of a Rule 60(b) motion only if there is a definite and firm conviction that the court committed a clear error of judgment. Davis v. Jellico Community Hospital, Inc., 912 F.2d 129, 133 (6th Cir. 1990). A Rule 60(b) motion cannot be used as a substitute for an appeal, and thus an appeal from an order denying Rule 60(b) relief does not bring up for review the underlying judgment. Browder v. Direct, Dep't of Corrections, 434 U.S.

257,263 n.7 (1978); Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989).

Upon review, we conclude that the district court did not abuse its discretion when it rejected plaintiff's post-judgment pleadings. In each of the submitted pleadings, plaintiff attempted to relitigate issues previously decided adversely to him. A final judgment has been entered dismissing plaintiff's action, that decision has been affirmed by this court and a petition for certiorari has been denied by the Supreme Court. Thus, no clear error of judgment on the part of the district court exists in this case.

Additionally, the order from the Muskegon County Probate Court is not appealable to this court. Thus, we do not review that appeal.

For the foregoing reasons, the defendants' motions to dismiss and request for costs and attorney fees are denied, plaintiff's motions for miscellaneous relief are denied, and the district court's orders of May 8, 1992, May 22, 1992, and June 3, 1992 are affirmed pursuant to Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
s/LEONARD GREEN, Clerk"

10/19/93: "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 10/15/93
Plaintiff Case No. 1:90cv175
v ORDER REJECTING PLEADING
RICHARD G. JOHNSON et al
Defendants

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleadings(s) and to return it to the offering party for the reasons noted below:

DATE RECEIVED: September _ 1993
PLEADING TITLE/FILER: Plaintiff's notification that a petition for writ of certiorari was filed in the Supreme Court on 10/4/93
REASON: This case is closed.

IT IS SO ORDERED.
DATED: 10/15/93. s/BENJAMIN F. GIBSON,
Chief U.S. District Judge"

12/15/93 "UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 12/10/93
Plaintiff, HON. BENJAMIN F. GIBSON
V. FILE NO 1:90cv175
RICHARD GORDON JOHNSON, et al.,
Defendants.

ORDER DENYING MOTION FOR RULE 60(b)(6) RELIEF FROM JUDGMENT

At a session of the Court held in and for said District and Division in the City of Grand Rapids, Michigan, this 10th day of December, 1993.

PRESENT: HON. BENJAMIN F. GIBSON, DISTRICT JUDGE

This matter having come before the Court pursuant to a Motion for Rule 60(b)(6) Relief from Judgment filed by plaintiff, and the Court having reviewed said motion and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that said motion (pleading #136) is DENIED.

IT IS SO ORDERED.

s/BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE"

1/5/94 In District Judge Gibson's So-Called "Closed" Case, He Mandated A Magistrate-One Judge Court Before Noticing Hearing To Review 1964-94 Constitutional Claims Shown In 4th Amended Complaint:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION FILED 1/4/94

DONALD EDGAR JOHNSON, File No. 1:90-CV-175
Plaintiff, Hon. Benjamin F. Gibson
v.
RICHARD GORDON JOHNSON, et al. MEMORANDUM OPINION and INJUNCTIVE ORDER
Defendants.

At a session of the Court held in and for

said District and Division, in the City of Grand Rapids, Michigan, this 3rd day of January, 1994.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

This matter is once again before the Court on plaintiff's recently filed pleadings (nos. 140,141, and 142) requesting the Court to issue summons forms and grant leave to file an amended complaint. An examination of the pleadings reveals that they were drafted by the pro se plaintiff without so much as a clue as to what the law is governing modification of judgments under Rules 59 and 60. The pleadings make no effort to justify relief under these rules since they completely ignore their content. The plaintiff has made a habit of such filings. The plaintiff's complaint--which was filed on February 27, 1990--sought to reopen litigation that was previously exhausted in the state courts. The complaint was dismissed by judgment of this Court of December 18, 1990. The dismissal was upheld by the Sixth Circuit Court of Appeals by its mandate of October 15, 1991. Despite this fact, the plaintiff has continued to file various requests regarding the closed case since October 15, 1991. Since that date, the Court has rejected by separate orders some 15 pleadings filed by the plaintiff seeking relief to which he was not entitled. Plaintiff's continual filing of these pleadgins has placed an administrative burden on this Court, as well as the clerk's office. As the Supreme Court has noted, the courts have a responsibility to see that judicial resources are properly allocated and conserved. In re McDonald, 489 U.S. 180,184 (1989). Rule 11 also requires courts to sanction the filing of meritless pleadings. Although the courts are understandably more indulgent with pro se litigants, this indulgence has its limits. As the Fifth Circuit has noted, "That [a plaintiff's] filings are pro se offers [plaintiff] no impenetrable shield [to sanctions], for one acting pro se has no license to harass others, clog the judicial machinery

with meritless litigation, and abuse already overloaded court dockets" Farguson v. MBank Houston, N.A., 808 F2d 358,359 (5th Cir. 1986).

When faced with similar situations, other federal courts have enjoined further filings. See Farguson, supra; Kaufhold v. Cauthen, 152 Bankr. 149 (Bankr. S.D. Tex. 1992). Such action is authorized both under Rule 11 and the general power of the courts to protect themselves from abusive filings. Id. In Farguson, the Fifth Circuit approved an order enjoining the plaintiff from filing further actions against the defendants based on matters set forth in the prior complaint. In Filipas v. Lemons, 835 F.2d 1145,1146 (6th Cir. 1987), the Sixth Circuit approved an even broader injunction prohibiting the filing of any lawsuit by the plaintiff without prior leave from the court. In making a determination as to the appropriate sanction, the Court is mindful that it should not unduly restrict plaintiff's access to court and should make its injunction as narrow and specific as possible. See Farguson, Supra.

Therefore, ITS IS HEREBY ORDERED tha plaintiff DONALD EDGAR JOHNSON's motions contained in pleadings no. 140, 141, and 142 are DENIED.

IT IS FURTHER HEREBY ORDERED that plaintiff DONALD EDGAR JOHNSON shall refrain from filing in this Court further complaints or pleadings relating to claims against the defendants made in this lawsuit (except for an appeal of this injunction, or any filing as to which the plaintiff first obtains leave from a United States Magistrate, which leave shall be granted if the accompanying request is not frivolous or made in bad faith).

IT IS FURTHER ORDERED that the clerk's office shall not accept from the plaintiff for filing further pleadings in this case (except for an appeal of this injunction, or in the event that plaintiff first obtains leave from a United States Magistrate). IT IS SO ORDERED."

s/BENJAMIN F. GIBSON, U.S DISTRICT JUDGE"

2/4/94 "UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
GRAND RAPIDS DIVISION

DONALD EDGAR JOHNSON FILED 2/3/94
v
RICHARD GORDON JOHNSON, et al.

ORDER

TO: COUNSEL OF RECORD.

You are advised that the following action is hereby taken by the Court in this matter:

DOCKET NUMBER OF MOTION: 140-142
DATE MOTION FILED: 12/14/93 - 12/20/93
PLAINTIFF'S MOTION (X)
TYPE OF MOTION: Add necessary parties in 5th Amended Complaint
ACTION TAKEN: DENIED (x).
IT IS SO ORDERED.

DATE: 2/3/94 s/HUGH W. BRENNEMAN, JR., U.S. MAGISTRATE JUDGE

2/25/94 In Related Matter, Michigan Michigan Supreme Court No. 97521 Denied Leave To Appeal Dismissal Of Don's Estate Claim And Closing Estate, **"Because We Are Not Persuaded That The Questions Presented Should Be Reviewed By This Court".**

6/9/94 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
GRAND RAPIDS DIVISION

DONALD EDGAR JOHNSON FILED 6/8/94
v
RICHARD GORDON JOHNSON, et al.

ORDER

TO: COUNSEL OF RECORD.

You are advised that the following action is hereby taken by the Court in this matter:

DOCKET NUMBER OF MOTION: 144
DATE MOTION FILED: 1/14/94
PLAINTIFF'S MOTION (X)
TYPE OF MOTION: for leave to file from U.S. Magistrate Judge to file plaintiff's motion for Rule 59(e) relief altering or amending 1/4/94 order &/or to certify for review
ACTION TAKEN: DENIED (x).

IT IS SO ORDERED.
DATE: 6/8/94 s/HUGH W. BRENNEMAN, JR.,
U.S. MAGISTRATE JUDGE

10/3/94 In Related Matter, Supreme Court No. 94-146 Denied Mandamus to Michigan Supreme Court No. 97521 To Stay State's 2/25-4/29/94 Dismissing Plaintiff's $500,000+ Claim Against Carl A. Johnson, Sr. $448,000+ Estate Pending Federal Proceedings.

11/8/94 District Judge Gibson Refused To Disqualify Himself Despite 10/11/94 Affidavit, Or Certify Constitutional Issue For 28 USC § 1292(b) Interlocutory Review At Court Of Appeals:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION
DONALD EDGAR JOHNSON, FILED NOV 4 1994
Plaintiff, File No. 1:90-CV-175
v
RICHARD GORDON JOHNSON, et al.,
Defendants.
At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 4th day of November, 1994.
PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE.

"This matter is before the Court on the motion of plaintiff Donald Edgar Johnson to reconsider the Court's previous orders denying him relief under Federal Rules of Civil Procedure 59 and 60, to reassign this closed case to another judge, and to reconsider the Court's injunction prohibiting plaintiff from filing frivolous pleadings.

Plaintiff's asserted basis for such motions is that the undersigned judge is biased against him such that the case should be reassigned pursuant to Title 28 United States Code Sections 144 and 455. Plaintiff's only basis for so asserting is that the Court has repeatedly ruled against him as to the many motions he has filed. The record, however, supports that

the Court has done so only because the motions were without merit and did not warrant relief. The record further supports the necessity of enjoining the plaintiff from filing further frivolous pleadings.

Therefore, the Court determines that there is no appropriate legal basis for reassignment of this closed case or for the other relief requested.

Accordingly, plaintiff's motion (pleading no. 205) is DENIED. IT IS SO ORDERED. s/BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE"

6/27/95 6th Cir. Ct. Of Appeals 94-2305 Affirmed District Judge's Denial Of FRCVP 60(b)(6) Relief:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED JUN 27 95 No. 94-2305

DONALD EDGAR JOHSON, Plaintiff-Appellant,

V. O R D E R

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; ESTATE OF CARL A. JOHNSON, SR.; LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK & ROBB: CULVER, LAGUE & McNALLY: O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON & EKLUND, P.C.; STATE OF MICHIGAN; ROBERT J. DANHOF, Michigan 'Court Of Appeals Chief Judge, jointly and severally, Defendants-Appellees.

NOT RECOMMENDED FOR FULL-TEXT PUBL * * *

"Donald Edgar Johnson, a pro se Michigan resident appeals a district court order denying his motion to set aside the court's previous orders filed pursuant to Fed. R. Civ. P. 59 and 60. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On December 19, 1990, the district court dismissed Johnson's civil rights complaint filed pursuant to 42 U.S.C. § 1985. Johnson's civil rights action arose from a dispute that Johnson had with his family in the mid-1960's. The dispute led to litigation and a trial in the state courts of Michigan. A judgment adverse to Johnson was ordered by the Michigan

trial court in December 1974.

Johnson appealed the district court's 1990 decision and this court affirmed the dismissal. Johnson v. Johnson, No. 91-1160, 1991 U.S. App. LEXIS 17922, at *2 (6th Cir. July 29, 1991, cert. denied, 502 U.S. 1059 (1992). In 1992, Johnson moved to alter the 1990 judgment pursuant to Fed.R. Civ. P. 60(b,). The district court denied the motion and this court affirmed. Johnson v. Johnson, No. 92-1829, 1992 U.S. App. LEXIS 34749, at *4-5 (6th Cir. Dec. 23, 1992).

Johnson then filed numerous documents with the district court. A magistrate judge ordered that the documents be struck from the record as frivolous. Johnson moved the district court to reconsider the magistrate judge's decision. The district court denied the motion. Johnson then filed a Rule 59 motion for reconsideration of this decision and a Rule 60(bK) motion for reconsideration of the December 19, 1990 decision. The district court denied both motions as meritless.

In his timely appeal, Johnson's brief raises a plethora of issues. He requests oral argument and has moved the court to void a 1994 state court decison.

The court reviews the denial of Rule 60(b) motion for an abuse of discretion. See Williams v Browman, 981 F2d 901, 903 (6th Cir. 1992) (per curiam). A Rule 60(b) motion may not be used as a substitute for an appeal, and thus, the underlying judgment is not reviewed. See Browder v. Director, Dept. of Correction, 434 U.S. 257,263 n.7 (1978). As for Johnson's Rule 59 motion, the court will consider the merits of the district court's order as this decision is subject to appellate review. Peabody Coal Co. v Local Union Nos. 1734, 1508 and 1534, UMW, 484 F2d 78,81 (6th Cir. 1973), cert. denied after subsequent appeal, 430 U.S. 940 (1977).

Upon review, we conclude that the district court did not abuse its discretion in denying Johnson's Rule 60(b) motion. As Johnson is attempting to have the district court reconsider

its December 19, 1990 order dismissing his civil rights complaint and that order has been affirmed on direct appeal and in a previous Rule 60(b) motion, the district court did not abuse its discretion to denying Johnson's second Rule 60(b) motion. As for Johnson's appeal of the denial of his Rule 59 motion, it is clear that the pleadings in question were in fact frivolous and the district court did not err in affirming the magistrate judge's decision.

Johnson contends that the district judge was biased. The legal standard to establish judicial bias requires the facts to ber such as would convince a reasonable person that bias exists. See United States v Story, 716 F2d 1088,1090 (6th Cir. 1983). Johnson has presented no evidence, nor do the facts indicate, that the district judge was biased. The argument is meritless.

Finally, a court possesses an inherent authority to sanction a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. Chambers v. NASCO Inc., 501 U.S. 32, 43-46 (1991). Johnson's current appeal represents his third attempt before this court to vacate the 1974 state court judgment. Should Johnson continue to file frivolous appeals involving the 1974 decision, the court may impose sanctions against him.

Accordingly, we deny the request for oral argument, deny the motion to void the state court dismissal, and affirm the district court's order. Rule 9(b)(3), Rules of the Sixth Circuit."

2/96 U.S. Supreme Court No. 95-934 DENIED Certiorari To 6th Circuit Court Of Appeals No. 94-2305.

6/13/96 Dist. Judge Gibson Denied Don's Motion To Alter Or Amend His 5/22/96 Order Affirming Magistrate Judge's 3/17/96 Order Finding That Don's Motion For Leave To File For Rehearing Was Frivolous:

UNITED STATES DISTRICT COURT
WEST MICHIGAN-SOUTHERN DISTRICT
FILED 6/13/96 No. 1:90-cv-175

DONALD EDGAR JOHNSON, Plaintiff,
V, MEMORANDUM OPINION & ORDER
RICHARD GORDON JOHNSON et al., Defendants.

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 13th day of June, 1996.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

"Plaintiff moves to reconsider this Court's order of May 22, 1996, affirming the magistrate judge's order of March 17, 1996, entered March 18, 1996, finding that plaintiff's motion for leave to file an emergency motion for rehearing was frivolous.

Plaintiff argues that this Court wrongly decided the motion, that Judge Gibson should have disqualified himself, and that 'defendant state agent Landman law firm's representative' along with other defendants should share the cost of plaintiff's '1991-1996 interlocutory appeals including a reasonable attorney fee.' Plaintiff has not adequately presented any persuasive basis for reconsideration of this Court's order.

Accordingly, IT IS HEREBY ORDERED that plaintiff's emergency motion (pleading no. 243) to alter or amend is DENIED. s/BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE."

5/1/97 6th Cir. Ct. Of Appeals 96-1826/1979 Denial Of Appeal Of District Judge Gibson's 6/13/97 Denials.

"U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
FILED 5/1/97 Nos. 96-1826/1979

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
V. O R D E R
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR.; THE ESTATE OF CARL A. JOHNSON, SR.; THE LAW FIRM PARTNERSHIPS OF LANDMAN LATIMER CLINK ROBB CULVER LAGUE & MCNALLY; O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF; STATE OF MICHIGAN;

O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, P.C.;ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge, Jointly and Severally, Defendants-Appellees.

NOT RECOMMENDED FOR FULL-TEXT PUBL * * *

"Donald Edgar Johnson appeals district court orders: (1) denying his motion for leave to file a motion for rehearing; and (2) denying a motion for reconsideration of that order. These cases have been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App.

These appeals are plaintiff's fourth appearance before this court attempting to assert his claim filed pursuant to 42 U.S.C. § 1985 that defendants conspired to deprive him of his civil rights in state court proceedings. In 1991, this court affirmed the district court's judgment dismissing his complaint for failure to state a claim upon which relief can be granted. Johnson v. Johnson, No. 91-1160, 1991 WL 138458 (6th Cir. July 29, 1991), cert. denied, 502 U.S. 1059 (1992). In 1992, this court affirmed three orders of the district court denying plaintiff's motions for postjudgment relief. Johnsonv. Johnson, No. 92-1829, 1992 WL 392892 (6th Cir. Dec. 23, 1992). Most recently, this court affirmed another district court order denying plaintiff's additional motions for relief from judgment. Johnson v. Johnson, No. 94-2305, 1995 WL 385142 (6th Cir. June 27, 1995), cer. denied, 116 S. Ct. 918 (1996).

Moreover, the district court entered an order enjoining plaintiff from filing further pleadings relating to the claims asserted herein without first obtaining leave from a magistrate judge. Thereafter, plaintiff filed a motion for leave to file an "emergency petition for rehearing," which the magistrate judge denied. Plaintiff appealed the denial to the district court, and the district court affirmed the magistrate judge's order. Next, plaintiff

filed an 'emergency motion to alter or amend' the district court's judgment affirming the magistrate judge's order, which the district court denied. Plaintiff filed a timely notice of appeal taken from the district court's judgment and the order denying his subsequent motion to alter or amend, which was docketed in this court as Case No. 96-1826. Four days after plaintiff filed his timely notice of appeal, plaintiff filed an 'emergency' motion pursuant to Fed. R. Civ. P. 60(b)(6) for relief from the district court's judgment affirming the magistrate judge's order. The district court denied plaintiff's motion, and plaintiff filed an amended notice of appeal within 30 days of the district court's order, docketed in this court as Case No. 96-1979.

Generally, this court reviews the denial of a Fed. R. Civ. P. 60(b) motion only for an abuse of discretion. Williams v. Browman, 981 F2d 901,903 (6th Cir. 1992) (per curiam); McDowell v.Dynamics Corp., 931 F2d 380,383 (6th Cir. 1991). In pertinent part, Rule 60(b)(6) provides for relief from a judgment for any reason justifying relief from operation of the judgment not specified in other section of Rule 60, but the relief available under this residual provision should be afforded only in unusual circumstances where principles of equity mandate relief. Olle v. Henary & Wright Corp., 910 F2d 357,365(6th Cir. 1990). The district court's discretion to deny relief under this provision is particularly broad. McDowell, 931 F2d at 383. The district court's order affirming the magistrate judge's order refusing plaintiff leave to file his motion is tantamount to a denial of plaintiff's motion.

The district court did not abuse its discretion in affirming the magistrate judge's order on appeal in Case No. 96-1826. Plaintiff's latest efforts to reopen the case are not based on new grounds and were properly characterized by the district court as frivolous. With respect to the district court order denying plaintiff's Rule 60(b) motion on appeal in Case No. 95-1979, the district

court had no jurisdiction to rule on plaintiff's Fed. R. Civ. P. 60(b) motion after the timely notice of appeal was filed. See Pittock v. Ottis Elevator Co., 8 F3d 325,327 (6th Cir. 1993).

The order denying relief therefore will be affirmed on this basis rather than on the merits. Further, it is noted that there is no factual basis for plaintiff's contention on appeal that the district court should have recused itself from this case. See Liteky v. United States, 510 U.S. 540,550 (1994).

Finally, plaintiff is again warned that further appeals involving this subject matter may lead to sanctions including, but no limited to, an order enjoining such appeals in the future.

For the foregoing reason, the judgments of the district court are affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
s/Leonard Green/??, Clerk"

8/1/97 Magistrate's 28 USC § 636 Report & Recommendation To Refuse To Schedule A "First Time" Hearing To Review Constitutional Claims Before Scheduling A Contempt Hearing For Filing 28 USC § 2284 Application For "No-Magistrate-Three-Judge Court" Without Magistrate's Leave. NOTE THAT HE FRAUD-UPON-THE-COURTS SUBSTITUTED "28 USC § 2844" FOR 28 USC §§ 2283,2284 IN FIRST PARAGRAPH:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON FILED AUG 1 1997
Plaintiff,
v. Case No. 1:90-CV-175
RICHARD GORDON JOHNSON, et al,
Defendants. Hon. Benjamin F. Gibson

REPORT AND RECOMMENDATION

This matter is before the court on plaintiff's attempted filing of (1) "supplement to plaintiffs' motion ...", (2) Plaintiff's motion (a) to correct five 7/157/16/97 orders and (b) for judgment on his 6/26-7/10/97

emergency pleadings, (3) Plaintiff's motions (a) to correct record to show 6/27-7/11/97 filings of Rule 60(b)(6) and 28 USC §§ 144,2844 pleadings, and (b) to vacate on ground of frauds upon courts the magistrate's 7//15-7/16/97 orders rejecting those pleadings, and (4) a Rule 59(e) motion to alter amend, or vacate magistrate judge's 7/22/97 order. Neither the motions mor the supplement have been accepted for filing because pursuant to the court's December 19, 1990 and January 4, 1994 orders (docket nos. 103 and 143 respectiely), plaintiff is required to obtain leave of court before he may file any additional pleadings in this action.

The court has reminded plaintiff in dozens of prior orders that final judgment has been entered in this case and it is closed. Plaintiff has filed at least four appeals to the Sixth Circuit regarding this action and, in a June 29, 1995 order, even that court threatened plaintiff with sanctions should he continue to file frivolous appeals.

The instant supplement and motions follow a stream of attempted filings byu plaintiff. The pleadings were rejected by the court because plaintiff had failed to obtain leave of court before filing them. Order Rejecting Pleadings (dock nos. 263-267). Thereafter, plaintiff filed a motion for leave to file the pleadings which had been rejected (docket no.268). The court denied leave because the pleadings were frivolous in that they raised issues which have been resolved in the judgment previously entered in this action or other final orders (docket no. 269).

In the supplement and the motions plaintiff asks the Court to accept all of his filings and to vacate the judgment and order which restrict his filings. It is apparent, however, that plaintiff ultimately seeks to vacate the judgment redered by the court over six years ago.

At this stage, simply rejecting the supplement or motions or denying leave to file them would appear to be futile gestures.

Plaintiff has simply ignored such actions in the past and there is no reason to believe he would not do so again. Rather than simply starting the cycle again, I respectfully recommend that the district court enter an order rejecting the supplement and attachments and the motions as violative of the court's December 19, 1990 and January 4, 1994 orders and that the court schedule an evidentiary hearing for the purpose of determining whether plaintiff should be held in contempt of court for his disregard of the court's orders.

Moreover, pending resolution of this matter, the clerk is directed to accept for filing any objections to this Report and Recommendation.

Entered 7/31/97

s/Hugh W. Brenneman, Jr.
U.S. Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be served and filed with the Clerk of the Court within ten (10) days after service of the report. All objections and responses to objections are governed by W.D.Mich. L.R. 13(b). Failure to serve and file written objections within the specified time waives the right to appeal the District Court's order. Thomas v. Arn, 474 U.S. 140 (1985), United States v. Walter, 638 F2d 947 (6th Cir. 1981)."

8/13/97 Gibson reviewed objections de novo, adopted Magistrate's Report & Recommendation, and scheduled contempt hearing:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON,
Plaintiff,

FILED AUG 13 1997
File No. 1:90-CV-175
Hon. BENJAMIN F. GIBSON

RICHARD GORDON JOHNSON, et al.,
Defendants.

MEMORANDUM OPINION and ORDER

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 12th day of August, 1997.

PRESENT: THE HONORABLE BENJAMIN F. GIBSON

SENIOR UNITED STATES DISTRICT JUDGE

This matter is before the Court on plaintiff Donald Edgar Johnson's objections to the Magistrate Judge's Report and Recommendation dated July 31, 1997. The Court reviews de novo portions of reports and recommendations to which specific objection is made. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C).

On December 18, 1990, this Court entered Judgment against plaintiff, thereby terminating this action. Pursuant to the Judgment and this Court's Order entered on January 4, 1994, (pleading nos. 103 and 143, plaintiff must obtain leave of court before he may file any additional pleadings in this case. Plaintiff repeatedly has attempted to file motions and other documents attacking the Judgment. Leave to file has been denied because the proposed submissions are frivolous, since they seek to raise issues already resolved.

The Magistrate Judge recommends that the Court enter an order rejecting plaintiff's proposed supplement, attachments, and motions listed in the Report and Recommendation and that the Court schedule an evidentiary hearing to determine whether plaintiff should be held in contempt of Court for his disregard of the Court's Orders. Plaintiff has filed a lengthy objection in the form of of an emergency motion and supplements thereto, charging that this Court is biased against him and attempting to reargue the underlying case. The Court is neither biased against plaintiff nor has it denied him due process. The Court agrees with the Magistrate Judge's recommendation.

NOW THEREFORE, IT IS HEREBY ORDERED that the Report and Recommendation of the Magistrate Judge dated July 31, 1997 (pleading No. 270) is ADOPTED as the Opinion of this Court.

IT IS FURTHER ORDERED that the supplement, attachments, and motions referenced in the Report and Recommendation are REJECTED.

IT IS FURTHER ORDERED that plaintiff's emergency motion to alter, amend, or vacate the 7/31/97 Report and Recommendation and, in the alternative, to vacate the 12/19/90

Judgment and 1/5/94 Order (pleading No. 271) is DENIED and that all of the attachments to the motion are REJECTED.

IT IS FURTHER ORDERED that a hearing will be held on Monday, October 10, 1997 at 10:00 A.M.. in courtroom 601, 110 Michigan N.W., Grand Rapids, Michigan, and that plaintiff must appear at the hearing to show cause why he should not be held in contempt of this Court.

IT IS SO ORDERED.

s/BENJAMIN F. GIBSON, SENIOR U.S.DISTRICT JUDGE"

9/11/97 **The Magistrate Judge DENIED Plaintiff's (1) 9/4/97 Motion For Full 1990-97 Record To Be Available At Hearings, And (2) 9/9/97 Motion For Prompt Ruling On Substantiality Of Three Constitutional Claims Before Any Hearing:**

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION FILED 9/11/97

DONALD EDGAR JOHNSON, Case No. 1:90-CV-175
Plaintiff, Hon. Benjamin F. Gibson
V.
RICHARD GORDON JOHNSON, et al,
Defendants.

ORDER

This matter is before the court on plaintiff's emergency motion for leave from magistrate judge for court's prompt ruling on **substantiality of plaintiff's three constitutional claims** before any hearing (docket no. 278). Plaintiff is subject to restrictions with regard to his filing of pleadings or other documents in this court and the motion should not have been accepted for filing. Nonetheless, as the motion has been accepted for filing, the court will consider on its merits. After due consideration, plaintiff's motion is DENIED.

This matter is also before the court on plaintiff's emergency motion for full 1990-1997 record to be available for all future hearings (docket no. 277). After due consideration, plaintiff's motion is DENIED.

Entered 9/10/97 s/Hugh W. Brenneman Jr.,
U.S. Magistrate Judge."

9/22/97 The Magistrate Judge: DENIED Plaintiff's 9/15-9/16//97 Motions (1) To Alter Or Amend 9/11/97 Order, (2) To Change 10/6/97 Hearing From Contempt To Invoking Procedure For 3-judge Court; And In The Alternative, To Certify Questions For Direct Appeal To The U.S. Supreme Court, And (3) For Transmitting Evidence To District Court:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION

FILED SEP 22 1997

DONALD EDGAR JOHNSON, Case No. 1:90-CV-175
Plaintiff, Hon. Benjamin F. Gibson
V.

ORDER

RICHARD GORDON JOHNSON, et al,
Defendants.

This matter is before the court on plaintiff's emergency motion for magistrate judge by 9/17/97 to alter or amend his 9/11/97-filed order and the court to change 10/6/97 hearing from contempt to invoking procedure for 3-judge court, and in the alternative, to certify questions for direct appeal to the U.S. Supreme Court (docket no. 281), Supplement to emergency plaintiff's motion for leave from magistrate judge for court's prompt ruling on substantiality of plaintiff's three constitutional claims before any hearing (docket no. 282), Motion for leave for clerk to issue two requests for evidence (docket no. 283), and supplement to emergency plaintiff's motion for magistrate judge by 9/17/97 to alter or amend his 9/11/97-filed order and the court to change 10/6/97 hearing from contempt to invoking procedure for 3-judge court; and in the alternative, to certify questions for direct appeal to the U.S. Supreme Court (docket no. 284). Plaintiff is subject to restrictions with regard to his filing of pleadings or other documents in this court and the motions and supplements should not have been accepted for filing. Nonetheless, as the motions and supplements have been accepted for filing, the court will consider them on their merits.

After due consideration, the relief requested in plaintiff's motions and supplements is DENIED.

IT IS SO ORDERED.

Dated: 9/22/97. s/Hugh W. Brenneman Jr., U.S. Magistrate Judge.

9/30/97 The District Judge Stayed Scheduled 10/6/97 Contempt Hearing Pending Appeal:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION

DONALD EDGAR JOHNSON, Plaintiff, V. RICHARD GORDON JOHNSON, et al., Defendants.

FILED 9/30/97
File No. 1:90-CV-175
Hon. BENJAMIN F. GIBSON
ORDER ADJOURNING HEARING

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 29th day of September, 1997.

PRESENT: THE HONORABLE BENJAMIN F. GIBSON
SENIOR UNITED STATES DISTRICT JUDGE

"In this matter. it appearing to the Court that plaintiff's appeal is pending before the Sixth Circuit, NOW, THEREFORE,

IT IS HEREBY ORDERED that the show cause hearing scheduled for Monday, October 6, 1997, at 10:00 a.m. is ADJOURNED WITHOUT DATE, pending resolution of the appeal before the Sixth Circuit.

IT IS SO ORDERED.

s/BENJAMIN F. GIBSON
SENIOR U.S. DISTRICT JUDGE"

2/10/98 Court of Appeals -- Including Judge NORRIS Who Adjudicated The FRAUD UPON COURTS Appeal No. 91-1160 -- 9/10/97 GRANTED Plaintiff's 28 USC § 636(c)(4)(5) Petition For Leave To Appeal District Judge's Denial of FRCVP 60(b)(6); 28 USC §§ 144, 2283, 2284 Relief; 10/10/97 Labeled Don's Amendment To His Appeal As A Separate Case; Consolidated The Cases And DISMISSED Don's Appeal Because "Plaintiff Has Not Been Held In Contempt NOR Have Sanctions Been Imposed"; Then Fabricated

An Untrue Opinion:

Nos. 97-1944, 97-1955 & 97-2062

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. RICHARD GORDON JOHNSON, et al, Defendants-Appellees.

FILED FEB 10 1998

LEONARD GREEN, Clerk

O R D E R

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

* * * Before: MARTIN, Chief Judge, NORRIS and CLAY, Circuit Judges.

"These cases are before the court upon initial consideration of appellate jurisdiction.

A review of the documents before the court indicates that on August 13, 1997 the district court scheduled a hearing to determine if the plaintiff should be held in contempt. Plaintiff's appeal of August 25, 1997 was docketed as appeal No. 97-1944. A second appeal from the same order was docketed as appeal No. 97-1955. The magistrate judge by order of September 22 denied a motion to alter or amend the September 11 order denying a full record be available at future hearings or to certify the case to the United States Supreme Court. On September 30, the district judge adjourned the contempt hearing pending resolution of the appeal. Plaintiff's third notice of appeal from the orders of August 13, September 11, September 22 and September 30 was docketed as appeal No. 97-2062.

This court lacks jurisdiction in these appeals. Plaintiff has not been held in contempt nor have sanctions been imposed. Accordingly, the various orders regarding the possible contempt determination are not appealable See In re Shalala, 996 F 2d 964 (8th Cir 1993), Shimer v. Fugazy (In re Fugazy Express, Inc.), 982 F 2d 769,775 (2d Cir. 1992). Also, the orders entered by the magistrate judge are not appealable because he was not given plenary jurisdiction pursuant to 28 U.S.C. § 636(c)(1), See McGraw v. Connelly (In re Bell & Beckwith), 838 F 2d 844, 848 n 5 (6th Cir. 1988). Ambros v. Welch, 729 F 2d 1084,1085 (6th Cir. 1984)(per curiam).

It is ordered that the appeals are dismissed. ENTERED BY ORDER OF THE COURT. s/Leonard Green, Clerk"

5/8/98 **Mandate And Motion To Stay DENIED:**

"U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
Donald C. Weston Sr. Filed: May 8, 1998
Western District of Michigan at Grandrapids
110 Michigan Avenue, N.W.
Suite 452 Federal Building
Grand Rapids, MI 49503

RE: 97-1944: 97-1955: 97-2062
Donald Edgar Johnson vs. Johnson, et al
District Court No. 90-00175

The mandate issued in the above-styled case.

Please be advised that the certified record will be sent under separate cover.

Sue Burlage, Case Manager

cc: Donald Edgar Johnson
Ms. Margaret A. Nelson"

====

"Case Nos. 97-1944: 97-1955: 97-2062
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
V. FILED May 8 1998
RICHARD GORDON JOHNSON, et al,
Defendants-Appellees.
BEFORE: MARTIN, Chief Judge; NORRIS and CLAY, Circuit Judges

Upon consideration of the appellant's 'tendered' motion for stay of mandate which was received one day late; it is ORDERED that the motion shall be accepted for filing.

Furthermore, upon consideration of the motion, it is ORDERED that the appellant's motion for stay of mandate pending outcome of review by the U.S. Supreme Court is DENIED as the appellant has failed to demonstrate good cause. ENTERED BY ORDER OF THE COURT. s/Leonard Green, Clerk".

10/5/98: Supreme Court Denied Certiorari:

"SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
October 5, 1998

Donald Edgar Johnson
1657 S. Getty St./Motorhome
PO Box 5407
Muskegon, MI 49445

Re; Donald Edgar Johnson v. Richard Gordon Johnson, et al No. 97-2043

Dear Mr. Johnson: The Court today entered the following order in the above entitled case: The petition for a writ of certiorari is denied.

Sincerely, s/William K. Suter, Clerk"

10/8/98 District Court Reassigned Case No. 1:90cv175 from Judge Gibson To Judge Hillman:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
Office of The Clerk
452 Federal Building
110 Michigan Ave., NW
Grand Rapids, MI 49503

Johnson, Plaintiff Case No. 1:90cv175
v
Johnson, Defendant.

Dear Counsel: Pursuant to Administrative Order No. 98-098 of this court, the above-captioned case has been reassigned to Honorable Douglas W. Hillman, U.S. District Judge, who is located in Grand Rapids, Michigan. all future filings should relect his name.

Existing deadlines and scheduled daters will be maintained as far as practicable, but some may not remain the same. Te judge's office will notify all counsel/parties when and if any changes occur. Please direct any question to his secretary, Cathy Kennedy at 616-456-2523.

RONALD C. WESTON, SR., Clerk
Dated: October 8,1998 By: s/D.Calen,Deputy Clerk

10/8/98 "UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF MICHIGAN
IN THE MATTER OF REASSINGNMENT OF POST-JUDGMENT MATTER IN CASE NUMBER 1:90cv175
DONALD E. JOHNSON, Plaintiff,
v
RICHARD G. JOHNSON, et al, Defendants
WHEREAS, plaintiff Donald E. Johnson has filed an emergency motion for leave to schedule a hearing, and
WHEREAS, Senior Judge Gibson is unavailable;

IT IS HEREBY ORDERED that this case be reassigned pursuant to the approved procedure for post-judgment matters.
Dated: 10/7/98 s/RICHARD ALAN ENSLEN, Chief Judge.

NOTICE TO THE PARTIES FROM THE CLERK OF THE COURT: THE POST-JUDGMENT MATTER HAS BEEN REASSIGNED TO Judge Douglas W. Hillman. Dated: 10/8/98."

10/14/98 "UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, Plaintiff, vs RICHARD GORDON JOHNSON, et al., Defendants.
FILED OCT 13 1998
Case No. 1:90cv175
Hon. Douglas W. Hillman

ORDER DENYING MOTION FOR LEAVE TO FILE AND ENJOINING PLAINTIFF FROM FURTHER FILINGS IN THIS ACTION

This matter is before the court on plaintiff's attempted filing of "PLAINTIFFS' EMERGENCY MOTION FOR MAGISTRATE JUDGE'S LEAVE FOR COURT TO SCHEDULE A PROMPT HEARING FOR DETERMINING (1) THAT DEFENDANTS AND THE COURT JUDGE HAVE ISSUED FALSE STATEMENT CONSTITUTING SIGNIFICANT FRAUDS UPON THE COURTS- OBSTRUCTION OF JUSTICE; (2) THAT PLAINTIFF' CONSTITUTIONAL CLAIMS ARE NOT FRIVOLOUS OR SUBJECT TO BEING LEFT TO THIS MAGISTRATE-ONE JUDGE COURT THAT HAS NOT AFFORDED AN ADEQUATE FORUM FOR VINDICATION OF 1970-98 DENIALS OF FEDERAL CONSTITUTIONAL RIGHTS; AND (3) THAT NO CONTEMPT

PROCEEDING SHOULD PRECEDE THIS HEARING," and a "Supplement" to that motion received by the court on Octyober 13, 1998. The motion and the supplement have not been acceptd for filing because, pursuant to the court's December 19, 1990 and January 4, 1994 orders (docket nos. 103 and 143 respectively), plaintiff is required to obtain leave of court before he may file any additional pleadings in this action. Included with the motion are hundreds of pages of other documents which the court has previously refused to accept for filing.

If the pleadings were accepted for filing, they would be the 202nd and 203rd docket entries after final judgment was entered in this action on December 18, 1990. The court has reminded plaintiff in dozens of prior orders that final judgment has been entered in this case and it is closed. Plaintiff has filed at least six appeals to the Sixth Circuit regarding this action and, in a June 29, 1995 order, even that court threatened plaintiff with sanctions should he continue to file frivolous appeals. Plaintiff has filed at least eight petitions for writs of certiorari and at least two petition for writs of mandamus in the United States Supreme Court relating to the matters at issue in this lawsuit. Plaintiff's persistence in the federal courts is matched by his persistence in the state courts. He has filed numerous appeals in the Michigan Court of Appeals and has sought leave to appeal multiple times in the Michigan Supreme Court.

Plaintiff's allegations have their genesis in a decision of the Muskegon County Circuit Court in 1974. For nearly 25 years, plaintiff has attempted to avoid the res judicata and collateral estoppel effects of that decision in every court available to him. Plaintiff has enjoyed ample opportunity to raise every possible collateral attack on the state court judgment. Every attack has failed and all lower court decisions which note the failure of plaintiff's attacks have been upheld or review refused at every possible level of the state and federal courts. Plaintiff's continued

attempts to relitigate matters already decided by the state courts for more than two decades and by the federal courts for nearly a decade fly in the face of the principle of finality in judgments.

Although orders previously entered protect the defendants fromt he burden of plaintiff's continued frivolous filings, they do not protect this court. Despite the orders previously entered by the court barring submissions attacking the state court's decision, plaintiff continues to file motions directed solely in that topic. "Each time plaintiff files a motion he submits hundred of pages of documents. The administrative burden of handling and reviewing the hundreds of pages plaintiff submits each time he files a motion is simply wasted effort.

The Sixth Circuit has concluded that a district court has the power, under the All Writs Act, to enjoin a party from filing suits attempting to reopen or relitigate closed cases. Spencer v Slone, No. 85-5792, 1986 WL 16350 at**3(6th Cir. January 10, 1986); see also Sassower v. Thompson, Hine & Flory, No. 92-3553, 1993 WL 57466 at**2(6th Cir. February 18, 1985), Ortmon v. Thomas, 99 F.3d 807 (6th Cir. 1996). That power "extends to enjoining further filings in support of frivolous or vexatious claims." Spencer, at **3. This court has already entered such an order (docket no. 103); however, the court has also given plaintiff the benefit of the doubt by affording him an opportunity to obtain the approval of a magistrate judge in the event that the proposed filing does not involve issues already decided by the court (docket no. 143). Plaintiff has repeatedly abused that privilege.

For the reasons set forth above, the injunction previously entered by the court and upheld by the Sixth Circuit is modified as follows: Plaintiff is permanently enjoined from filing any further pleadings in this action (other than an appeal of this order) and plaintiff is enjoined from filing in this court any additional actions arising from the same

transaction and occurrences that were the subject matter of this litigation. Plaintiff, of course, is not barred from fililng litigation unrelated to the claims he raised in this action.

Leave to file the motion referenced above is DENIED as frivolous The Clerk of the Court shall return to plaintiff his motion and all documents submitted therewith, as well as the proposed supplement to the motion filed on October 13, 1995.

IT IS SO ORDERED.

Dated: OCT 13 1996

sDouglas W. Hillman
Senior District Judge"

10/26/98 "UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, et al,
Plaintiffs,

FILED 98 OCT 26
Case No. 1:90CV175

-vs-

RICHARD GORDON JOHNSON, et al,
Defendants.

Hon. Douglas W. Hillman

ORDER

On October 13, 1998, following a protracted and abusive post-judgment history that has included over 200 postjudgment docket entries and hundreds of additional pages of rejected documents, this court issued an order permanently enjoining plaintiff from filing any further pleadings in this action, other than a notice of appeal of the October 13, 1998 order. On October 15, 1998, apparently before receiving the October 13, 1998 order, plaintiff submitted for filing a second supplement of his emergency motion to file that was rejected by the court in the October 13, 1998 order. That pleading subsequently was rejected by the magistrate judge on October 20, 1998, with reference to this court's October 13 order (docket #308).

In the interim, on October 16, 1998, in direct contravention of the court's October 13 order (which plaintiff attached to his motion), plaintiff filed an Emergency Motion to Stay Proceedings and Certify Questions for

Interlocutory Appeal (docket #307), in which plaintiff again attempts to raise substantive attacks on the finality of the December 19, 1990 judgment entered in this case. Thereafter, on October 22, 1998, plaintiff filed a brief in support of his October 16 motion (docket #309), in which he requests both certification of substantive question and alternative relief in the form of reconsideration of the court's October 13, 1998 order. Yet again, on October 23, 1998, plaintiff filed a supplement to his motion to stay proceedings and certify question (docket #310).

Inasmuch as plaintiff's motion, brief in support and supplement do not constitute an appeal of the October 13, 1998 order, those pleadings are explicitly barred by the October 13, 1998 order. Accordingly, IT IS ORDERED that plaintiff's Emergency Motion to Stay Proceedings and Certify Questions for Interlocutory Appeal (docket #307), together with his brief in support (docket #309) and supplement (docket #310) are dismissed as frivolous.

IT IS FURTHER ORDERED that plaintiff shall appear before this court on Monday November 16, 1998, at 10:00 a.m., in Courtroom 699, Federal Building, Grand Rapids, Michigan, to show cause why he should not be held in contempt of court for the filing of his Emergency Motion to Stay Proceedings and Certify Questions for Interlocutory Appeal and subsequent supporting documents in express violation of this court's October 13, 1998 order.

IT IS FURTHER ORDERED that the Clerk of Court shall reject without filing and wihout review by a magistrate judge any pleadings submitted by plaintiff for filing in the present action. The only exception to this order shall be a Notice of Appeal of this court's October 13, 1998 order (docket #306).

s/Douglas W. Hillman,
Senior District Judge

Dated: OCT 26 1998."

11/9/98 "No. 98-2190

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: DONALD EDGAR JOHNSON,

Petitioner.

FILED
NOV 9 1998
LEONARD GREEN, Clerk

O R D E R

Before: JONES, RYAN, and BATCHELDER, Circuit Judges

The petitioner is a pro se litigant who has doggedly pursued a civil rights action in the district court for nearly a decade. He now seeks from this court a writ of mandamus which would (1) immediately stay all "state amd federa; court proceedings" relating to his action, (2) require the production of evidence presented by the petitioner in a state court action in 1974, and (3) order the convening of a three-judge district court under 28 U.S.C. § 2284 or order the district court to hold a hearing to determine if such a panel should be convened.

The petitioner's litigational experience dates from at least the early 1970's when he was involved in state proceedings involving his father's estate.

In 1990, he filed a federal civil rights action alleging a conspiracy among the estate, his siblings, various law firms and a state court judge to deprive him of certain constitutional rights. The district court dismissed the action on grounds of res judicata. On direct appeal, this court affirmed.. Johnaon v. Johnson, No. 91-1160, 1991 WL 138458 (6th Cir. July 29, 1991) (unpublished order), cert. denied, 502 U.S. 1059 (1992). Subsequently, the petitioner has sought relief from that judgment through a series of post-judgment motions. The district court has denied each motion and this court has affirmed such denial. See Johnson v. Johnson, No. 92-1829, 1992 WL 392892 (6th Cir. Dec 23, 1992) (unpublished order), Johnson v. Johnson, No. 94-2305, 1995 WL 385142 (6th Cir. June 27, 1995) (unpublished order), cert. denied, 516 U.S. 1115(1996), Johnson v. Johnson, Nos. 96-1826/1979, 1997

WL 225503 (6th Cir. May 1, 1997)(unpublished order). The latter two orders both included language informing the petitioner that continued frivolous appeals involving the 1970's state litigation could result in sanctions against him.

Meanwhile, the filings continued in the district court. On October 13, 1998, that court filed an order in which it addressed the "protracted and abusive post-judgment history" of the petitioner's civil rights action and permanently enjoined him from filing any further pleadings in that action other than a notice of appeal from such injunction. Despite that order, the petitioner submitted additional pleadings to the district court a few days later. The district court denied those pleadings as frivolous and ordered the petitioner to appear before the district court on November 16, 1998, to show cause why he should not be held in contempt for violating the October 13, 1998, injunction. The present mandamus petition is in apparent response to the latter order. Although the petitioner attached a copy of that order to his mandamus petition, the body of the petition addresses issues pertaining to the alleged merits of this civil rights action.

The traditional use of a mandamus petition is "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk Ass'n, 319 U.S. 21,26 (1943). A petitioner seeking the writ must demonstrate either a clear abuse of discretion on the part of the lower court or conduct amounting to usurpation of judicial power. Mallard v. United States District Court, 490 U.S. 296, 309 (1989). The petitioner's assertions do not rise to this level and do not warrant mandamus intervention.

To the extent the petitioner seeks the convening of a three-judge district court panel, he has not attempted to demonstrate the grounds for such a panel under the criteria set forth

in 28 U.S.C. § 2284. See Tillett v. Lujan, 931 F.2d 636,642 (10th Cir. 1991). Likewise, he has shown no cognent reasons for this court to stay the current proceedings in the district court or to order the production of records pertaining to a 1974 state trial. Finally, we note that although the district court's order of October 13, 1998 permits the petitioner to file a notice of appeal from the injunction contained therein, he has not filed such an appeal. A mandamus petition is not an alternative means for such review. See City of Cleveland v. Krupansky, 619 F.2d 572,575(6th Cir.)(per curiam), cert. denied 449 U.S. 834 (1980) (mandamus cannot be used as a substitute for an appeal).

It therefore is ORDERED that the petition for a writ of mandamus is dismissed as frivolous. This order is without prejudice to the petitioner's filing a timely notice of appeal from the district court's injunction of October 13, 1998, or from any future order which finds him in contempt and imposes a penalty for such contempt.

ENTERED BY ORDER OF THE COURT
s/ Leonard Green/??, Clerk.

[1]Those warnings have not had the desired effect. The petitioner recently filed three additional appeals which were dismissed by this court for lack of jurisdiction. Johnson v. Johnson, Nos. 97-1944/1955/2062(6thCir.Feb.10,1998)(unpublished order), cert. denied, --U.S.--(Oct 5, 1998).

[2]The district court noted that the history of the petitioner's civil rights action "included over 200 post-judment docket entries and hundreds of additional pages of rejected documents..."

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APPENDIX B: 1970-89 OTHER CHRONOLOGICAL OPINIONS, ORDERS, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW ENTERED IN THE NONCLOSED 1990 CASE INCLUDING COMPANION CASES NECESSARY TO ASCERTAIN GROUNDS OF THE 4/17/90-TO-11/9/98 ORDERS TO BE REVIEWED:

6/26/70 Utilizing 4/15/65 Unlawful Invalid $20,600 Promissory Note, Confidence Game Perpetrator/ Perpetuator Respondent LANDMAN Law Firm's (Which 1964-65 Represented Don & Richard In Behalf Of 4 Johnson Family Venture) Client Richard's (In Behalf Of deft 3 Johnsons) County Circuit Court Case No. C-4921 Default Judgment Against Nonlawyer Joint Venturer Don For Taking Don's Private Properties (Monumental Nightclub Equity Ownership Plus A Power Of Attorney To Respondent Richard To Negotiate Terms Of Nightclub Purchase) Without Reasonable Access, Due Process, Equal Protection, Or Just Compensation For Public And Private Use-Influencing Votes In Violation Of Const. Amends. 1,5,14; 42 USC 1985(2)(3); 28 USC § 2284 -- Where (1) Then-Attorney Albert J. Engel-Recommended To-Be County Circuit Judge Atty Charles A. Larnard, Jr. Had 1/22/66 Instructed 4 Johnson Joint Venturers Not To Incorporate Nightclub Yet, And (2) Had, As County Circuit Judge Promised Don To Allow Don's Father, Deft Carl A. Johnson-Sr., To Represent Exhausted Nonlawyer Don In 1970 Court Proceedings. And Where Deft O'Toole Law Firm f/k/a Engle & Engel, Representing Both Joint Venture Buyers And Sellers Of Nightclub Liquor License: (1) Refused To Represent Don, And (2) Refused To Provide Don With Unlawful Moneylender Documents That Were Locked Away From Don 1965-74 (Merged in Judgment Was 6/22/70-Filed $20,600 Invalid Promissory Note That Was Unsigned By Donald E. Johnson.) (Printed on Deft Landman law firm's stationery):

"STATE OF MICHIGAN

CIRCUIT COURT FOR THE COUNTY OF MUSKEGO

RICHARD G. JOHNSON, TRUSTEE Case No. C-4921

Plaintiff,

v.

DEFAULT JUDGMENT

DONALD E. JOHNSON
Defendant. ENTERED 6/26/70

"The default of Donald E. Johnson, defendant in the above cause, having been regularly entered pursuant to G.C.R. 520, the defendant having failed to appear in said action, and the damages of plaintiff having been regularly assessed by the Court at $35,835.29:

THEREFORE IT IS ORDERED AND ADJUDGED that there is due to the plaintiff upon the note and mortgage mentioned and set for in the complaint, for principal and interest and unpaid real estate taxes, the sum of $35,835.29 and that the said defendant pay or cause to be paid, to the said plaintiff, the sum so as aforesaid decreed to be due to the plaintiff with the interest thereon, at the rate of six percent (6%) per annum from this date, and the cost of the said plaintiff expended in this suit of $35.80, to be taxed for the proceedings taken and had in this cause to foreclose the mortgage aforesaid, on or before the 12th day of January, 1971, and in default thereof, that all and singular the said mortgaged premises mentioned in the complaint in this cause, and hereinafter described or so much thereof as may be sufficient to raise the amount so as aforesaid decreed to be due to the plaintiff with the interest thereon and the cost in this case * * *

IT IS FURTHER ORDERED that in six months from the date of such sale, the defendant and all persons claiming or to claim from or under him be forever barred and foreclosed of and from all equity redemption, and claim of, in and to the said mortgaged premises so sold and every part and parcel thereof, which shall not, prior to that time, been redeemed from such sale.

IT IS FURTHER ORDERED, that the purchaser or purchasers of the said mortgaged premises at such sale be let into possession of such premises at the time of said sale and placed in possession of all such portions thereof

as shall not have been so redeemed; and that any of the parties to this caus, who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this suit, has come into possession under them or either of them, deliver possession thereof to such purchaser, on production of the deed of the said District Judge for such premises and a certified copy of the order confirming the report of such sale after such deed has become operative.

AND IT IS FURTHER ORDERED, that if the monies arising from such sale be insufficient to pay the amount so as aforesaid decreed to be due * * * Donald E. Johnson * * * pay to the plaintiff the amount of such deficiency, with interest thereon from the date of such report.

The description and particular boundaries of the property * * * are more particularly described as follows, to-wit: Parcel 1. Commence 254.25 feet South * * * Parcel 2. Commence 254.25 feet South * * * Dated: June 26, 1970. s/CHARLES A. LARNARD, Circuit Court Judge."

11/27/74 **"Bought-With Stolen Title To Don's Kandy Tapes & Records Corp. Or Muskegon Mayor/Commissioner Donald E. Johnson-Signed Invalid "Kandy Tapes And Records Corp." County Trial Judge Piercey's OPINION Just After Don Presented His Long List Of Proofs Of Family Joint Venture, Before Any Closing Argument, And Just Before He Walked Off The Bench:**

"You have tried to translate fatherly, motherly, brotherly, concern for your interest into some kind of a joint venture * * * This was never a joint venture * * * And as far as I am concerned, you rested * * * You may not have ever used that form -- the words: 'I rest'; but * * * You have been saying it for two weeks, and I'm through!" (Whereupon the Judge walked off the Bench.)

12/9/74 County Trial Judge Piercey's Case No. 73-C7432-CK Partial Trial's Dismissal Judgment That U.S. District Judge Gibson 12/19/90 Ordered Not To Be Attacked. Prepared By Confidence Game Perpetrator-Perpetuator Respondent LANDMAN Firm, It Contains FRAUDS UPON COURTS: (1) That "Plaintiff Rested His Case," (2) That "The Defendants Having Moved For Judgment At The End Of Plaintiff's Case", (3) That "The Court Having Made Findings Of Fact And Conclusions Of Law," And (4) That "Plaintiff Not Having Proven The Allegations Contained In His Complaint":

"STATE OF MICHIGAN
IN CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
FILED 1974 DEC 9 PM 2:44

* * *

DONALD EDGAR JOHNSON,
Plaintiff, File No. 73-7432-CK

v.

CARL ALFRED JOHNSON, SR., et al,
Defendants. JUDGMENT

Donald Edgar Johson
In Propria Persona
William F. McNally (P-17533)
Attorney for Defendants

At a session of said Court held in the County Building in the City of Muskegon, County and State aforesaid, on the 9th day of December, 1974.

PRESENT: s/JOHN H. PIERCEY, CIRCUIT JUDGE

"The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for Judgement at the end of plaintiff's case, the Court being fully advised in the premises, and the Court having made findings of fact and conclusions of law,

IT IS ORDERED, that defendants' Motion be and hereby is granted and Judgement of No Cause of Action be entered in favor of the Defendants, with costs and statutory attorneys fees being taxed against plaintiff, plaintiff not having proven the allegations contained in his complaint for the reasons set out in the opinion of the Court rendered in open court.

s/JOHN H. PIERCEY, CIRCUIT JUDGE

Countersigned: s/James C. Shields, Jr.,
Deputy Clerk.

Approved as to Form:

s/William F. McNally

Donald Edgar Johnson
Plaintiff
4984 Grand Haven Road
Muskegon, Michigan 49441

William F. McNally, of
LANDMAN, HATHAWAY,
LATIMER, CLINK & ROBB
Attorneys for
Defendants
500 Hackley Bank Bldg.
Muskegon, Michigan 49443

I HEREBY CERTIFY that this copy to be a true and correct copy of the original on file with the office of COUNTY CLERK. This Certified Copy VALID only When SEAL And RED SIGNAYURS Are Affixed. s/Margaret H. Greenwood, MUSKEGON COUNTY CLERK."
(Printed On Deft Landman Firm's Stationery).

7/2/75

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN 56870
Entered 7/2/75
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees COA 22496; LC 74-7432

"On order of the Court, plaintiff-appellant's in pro per motion for leave to use proposed capsule staements and proposed statement of proceedings and facts, and his motion for the production of certain records, are considered, and the same are hereby DENIED as not appropriate under the general court rules."

2/5/76 State Court Of Appeals Ordered Transcripts To Be Filed In The Muskegon County Circuit TRIAL Court:

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * * 2/5/76
DONALD EDGAR JOHNSON,
Plaintiff-Appellant
v. Donald E. Holbrook,Jr., P.J.
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,

Jointly and severally, Docket #22496
Defendants-Appellees L.C. No. 73 C-7432 CK

"In this cause this Court having issued an order on September 24, 1975 denying the defendants-appellees' motion to dismiss and the defendants-appellees having filed a motion for reconsideration of this Court's order denying the motion to dismiss, and various motions for leave to use proposed capsule statement of proceedings having been filed by the plaintiff-appellant, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for reconsideration be, and the same is hereby GRANTED,

...IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed <u>in the trial court</u>,

IT IS FURTHER ORDERED that the various motions for leave to file various capsule statementy of proceedings filed by the plaintiff-appellant be, and the same are hereby DENIED."

<u>5/26/76</u>

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

56870 Entered 5/26/76

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., Defendants-Appellees

COA 22496; LC 73-C-7432

"On order of the Court, the application in pro per for leave to appeal is considered, and the same hereby is DENIED, because appellant has failed to persuade the Court <u>that the questions presented should be reviewed by this Court</u>.

The motion by appellant to add defendants-appellees is also considered, and the same hereby is DENIED."

10/3/77 6th Cir. Court Of Appeals Denied Don's F.R.A.P. 44 Motion For Certification To U.S. Attorney General Of CONSTITUTIONAL QUESTION:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
FILED OCT 3 1977 No. 77-1346

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR., ET AL., Defendants-Appellees

This cause having come before the court on the motion of the appellant for certification to be made to the Attorney General of the United States of a question raised in this appeal as to the constitutionality of an Act of Congress, pursuant to Rule 44, Fed.R.App.P.; and

This court having reviewed the record and pleadings in the cause and being unable to discover any such challenge to the constitutionality of any Act of Congress as suggested by appellant;

It is therefore ORDERED that the motion be denied."

12/29/77

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

60385 Entered 12/29/77

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR.,et al, Defendants-Appellees

COA 22496; LC 73-C-7432

"On order of the Court, the application in propria persona for leave to appeal and the emergency motion for prompt adjudication are considered, The emergency motion is GRANTED and the application is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court."

8/23/77 Pltf's Motion In State Court Of Appeals For Stay of 2/5/76 Dismissal Order DENIED:

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN No. 22496 Entered 8/23/77
Donald E. Holbrook, Jr. P.J.

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. L.C. No. 73 C7432 CK

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, plaintiff-appellant has filed a motion for stay of this Court's order of dismissal entered on February 5, 1976, and answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for stay be, and the same is hereby DENIED."

12/29/77

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

60385 Entered 12/29/77

DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., Defendants-Appellees

COA 22496; LC 73-C-7432-CK

"On order of the Court, the application in propria persona for leave to appeal and the emergency motion for prompt adjudication are considered. The emergncy motion is GRANTED and the application is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court."

11/15/78 Deft Judge Danhof Who Was Nonjudicially Involved In Perpetuating Defts 3 Johnsons' Disguise DENIED Don's Motion For Stay Of Court's 2/5/76 Dismissal And Motion For Disqualification Of Deft Landman Partnership From Representing Deft 3 Johnsons:

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Entered 11/15/78 No.22496

Robert J. Danhof, C.J., Presiding Judge

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. L.C. No. 73 C7432 CK

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, plaintiff-appellant has filed a motion for stay of this Court's order

of dismissal entered on February 5, 1976 and a motion for disqualification of counsel for defendants-appellees, and no answerin opposition thereto having been filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion for stay and the motion for disqualification be and the same are hereby DENIED."

10/26/79: Deft Judge Danhof DENIED Don's Application For Delayed Appeal Of Right "Because It Is Filed More Than 18 Months After The Entry Of The December 9, 1974 Order Appealed From":

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Entered 10/26/79 No.45093

Robert J. Danhof, C.J., Presiding Judge

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. L.C. No. 73 C7432 CK

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

In this cause an application for leave to appeal and motion for waiver of fees, and a motion for immediate consideration thereof are filed by plaintiff-appellant, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion to waive fees be, and the same is hereby GRANTED;

IT IS FURTHER ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED:

IT IS FURTHER ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction. GCR 1963, 806.2(5), in this application plaintiff seeks review of a December 9, 1974 circuit court dismissal of his action. The May 8, 1979 circuit court order involves post-judgment motions which plaintiff filed in circuit court in an attempt to perfect an application for delayed appeal before this Court. This Court may not grant plaintiff's application because it is filed more than 18 months after the entry of the Decdmber 9, 1974 order appealed from."

3/11/80

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

Entered 3/11/80

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 64310
COA: 45093

v.

CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees.

LC: 73-C7432-CK

"On order of the Court, the motions for immediate consideration are considered, and they are GRANTED. The application in propria persona for leave to appeal is also considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court."

2/8/82 County Judge Piercey HEARING:

"THE COURT: Your motion, as I understand it, is to add the Landman law firm as Defendants?

DONALD JOHNSON: ... The bottom line of this whole problem here is: 'Were the Defendants moneylenders or joint venturers?' And I repeat that they never did let me have custody of their money or property. They always had their joint control of it.

THE COURT: I don't recall ever calling them moneylenders. I think I referred to them as giving you money, giving you money, not lending you money.

PLAINTIFF: They didn't give me money because I never got it. Their money stayed under their control. Had they given me their money, I would have had it in my bank account of my personal possession where I could reach in any time I wanted to and take it out and spend it the way I wanted. That never happened. They never gave me any money."

5/10/82 County Trial Judge Piercey Ordered County Circui Court Records To Accept No More Pleadings From Don Unless Ordered To By A Higher Court:

"TO: Circuit Court Records
FROM John H. Piercey, Circuit Judge

You are herewith instructed to accept no more pleadings in the case of - Donald Edgar Johnson v Carl Alfred Johnson, Sr., Richard Gordon Johnson, Carl Alfred Johnson, Jr., joint and severally, Defendants; File No. 73-C7432, unless directed by the Court of Appeals or a higher Court. s/John H. Piercey."

11/23/82 In A "No Judges" Ruling And After Resulted Indigent Don 1976-82 Bootstrapped himself Off Public Welfare And Piecemeal Filed $5,000 Full Transcripts Of The Proceedings In TRIAL COURT Pursuant To 2/5/76 Order, "Danhof's Court" Denied Don's Application For Delayed Appeal Of Right Because Don Did Not File Those Transcripts In The COURT OF APPEALS:

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON

Present _____

Plaintiff-Appellant,

v

11/23/82

CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally,

Docket No.59895

Defendants-Appellees

L.C. #73 C-7432-CK

* * * In this cause the plaintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974, and an order denying relief in the circuit court dated February 11, 1982, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction in the Court of Appeals, GCR 1963, 806.2(5).

Plaintiff-appellant's application seeks delayed review of proceedings which terminated in a judgment adverse to him on December 9, 1974. His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2)

and upon filing full transcripts with this court. See order dated February 5, 1976.

Plaintiff-appellant's failure to file any transcripts with the Court until October 2; 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979. Because this applicaion also is outside the 18-month rule of GCR 1963, 806.2(5), it is likewise DENIED for lack of jurisdiction.

s/_____"

5/4/83 County Trial Judge Piercey's Replacement Judge #1 Judge Pannucci Ordered Due Process Hearing To Determine If The 12/9/74 Judgment Was Procured And Prolonged By FRAUDS UPON THE COURT:

TO: Mrs. Helen Cremax, Case Assignment Clerk
FROM: HON. RONALD H. PANNUCCI, CIRCUIT JUDGE
RE: DONALD EDGAR JOHNSON V. CARL ALFRED JOHNSON, ET AL
DATED: May 4, 1983.

Please see attached Emergency Motion. This matter is scheduled for Friday, May 13, 1983 at 2:30 p.m. You will please make necessary arrangements to have a District Court Judge present to hear this motion, as well as pleas which I am advised you have previously scheduled.

I am aware of a previous Judge Piercey Order denying Plaintiff an opportunity to file any pleadings. I am setting aside this Order to allow Plaintiff his day in court.

cc: Mr. Donald E. Johnson
Mr. William F. McNally
Circuit Court Records
Hon. R. Max Daniels
Hon. Jas. M. Graves, Jr.

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE WITH THE OFFICE OF THE COUNTY CLERK * * *
s/SHERYL L. ALBERTIE, Muskegon County Clerk"

5/10/83 Pltf's Case No. 73-C7432-CK Was Denied Due Process-Equal Protection Motion For New Trial's Evidentiary Hearing Due To Respondent LANDMAN Partnership's (Including Attys Culver & McNally) 6/6/83 FRAUD ON COURTS That "The Judgment From Which Plaintiff Johnson Seeks Relief Was Entered Many Years Ago, And The Full Appellate Process Has Been Exhausted":

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v. O R D E R

CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and Circuit Court
CARL ALFRED JOHNSON, JR., File No. 73-C7432-CK
jointly and severally,
Defendant-Appelles. CALENDARED

The court has reconsidered the May 4, 1983 memorandum;

It is therefore ORDERED that the May 10. 1982 Order signed by Judge Piercey is reinstated.

The Clerk is instructed to return all pleadings and fees.

Dated: May 10, 1983. s/RONALD H. PANNUCCI,
Chief Circuit Judge

cc: Mrs. Helen Crehan
Circuit Court Records
Mr. Donald E. Johnson
Mr. William F. McNally

I HEREBY CERTIFY etc."

6/29/83 County Judge Piercey's Replacement #2 Judge Kobza Ordered Don To Remove His Preponderance Of Evidence Presented In 1974 Partial Trial From The County Courthouse Files As If Case 73-C7432-Ck Had Been Provided An Appeal By The Michigan Court Of Appeals When It Really Had Not: "STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON
Plaintiff-Appellant,

CARL A. JOHNSON, SR., et al File No. 73-C7432-CK

Defendants-Appellees.

"This Court is advised certain exhibits are currently on file with the Muskegon County Clerk's office, Court Records Dept., in the above determined matter, and that it is the opinion of the Court said cause was appealed and the Michigan Supreme Court has denied leave to appeal further, the time for filing any motion for reconsideration long since passed; **IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the Plaintiff, Donald Edgar Johnson, by Friday, July 1, 1983, 12:00 o'clock noon;** and he is to sign a prepared receipt therefor, or this Court will order them removed and/or destroyed in accordance with the General Court Rule so providing. This Order is to take effect immediately. s/Michael E. Kobza."

9/27/83

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON

John H. Shepard, P.J.

Plaintiff-Appellant,

v

9/27/83

CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally,

Docket 50565

Defendants-Appellees

L.C. #73 C-7432-CK

"In this cause a delayed application for leave to appeal and motion for immediate consideration are filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED,

IT IS FURTHER ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented."

1/30/84

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

Entered 1/30/84

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 73254
v. COA: 50565
CARL ALFRED JOHNSON, SR., LC: 73-C7432-CK
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court."

9/20/84 No Judge Listed!!

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON

Present _____

Plaintiff-Appellant,
v 9/20/84
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally, Docket No. 59895
Defendants-Appellees L.C.#73C-7432-CK

"In this cause an application for leave to appeal is filed by plaintiff-appellant, and no answer in opposition therein having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented."

3/28/85

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Entered 3/28/85

DONALD EDGAR JOHNSON,
Plaintiff-Appellant, SC: 75403
v. COA: 78170

CARL ALFRED JOHNSON, SR., LC: 73-C7432-CK
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees.

"On order of the Court, the application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court."

2/4/86

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON, Present 2/4/86
Plaintiff No. 88008
V.
MUSKEGON CIRCUIT COURT JUDGE,
CARL ALFRED JOHNSON,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR., LANDMAN LATIMER CLINK & ROBB, Law Firm Partnership, and WILLIAM F. MCNALLY
Defendants.

"In this cause a complaint for superintending control and motion for immediate consideration are filed by plaintiff, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED,

IT IS FURTHER ORDERED that the complaint for superintending control be, and the same is hereby DENIED for lack of merit in the grounds presented."

Judge Shepherd would order pursuant to MCR 7.206(B)(3) that the Muskegon County Circuit Court shall allow plaintiff to file an independent action based upon alleged fraud upon the Court, MCR 2.612(C)(3), provided that the requisite fees and costs are either paid, waived or suspended. By allowing plaintiff

to file an independent action below, this Court expresses no opinion on the form and content of the pleadings which may be filed, merits of plaintiff's action or any defenses which may be raised."

6/20/86 In A "Non-Evidentiary" Hearing, County Judge Kozba (1) Ordered That Don's No. 73-C7432-CK And Independent Action No. 86-21207-CZ Seeking "Fraud Upon Court" Evidentiary Hearing Be Consolidated; (2) Denied Don's Request For Disqualification Of Deft Culver And O'Toole Law Firm Partnerships From Dual Representation Of Nightclub Sellers And Joint Venture Deft 3 Johnsons Disguised-As-Moneylenders Buyers:

"STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff,
v. File No. 86-21207-CZ
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.;
and ESTATE OF CARL A.
JOHNSON, SR., Jointly and Severally,
Defendants.

DONALD EDGAR JOHNSON, In Pro Per

FRED C. CULVER, JR. (P-12381)
Attorney for Defendants Richard Gordon Johnson and Carl Alfred Johnson, Jr.
Culver, Lague & McNally
500 Terrace Plaza
Muskegon, Michigan 49443
Telephone: 616/725-8148

THOMAS J. O'TOOL (P-18558)
Attorney for Defendant Estate of Carl A. Johnson, Sr.

JUDGMENT ORDER

At a session of said court held in the County Building, Muskegon, Michigan, on the 20th day of June, 1986.

PRESENT: HON. MICHAEL E. KOBZA, Circuit Judge.

"Defendants having filed their motion for summary disposition of all of plaintiff's claims for failure to state any claim upon which relief can be granted pursuant to MCR 2116(C)(8),

and the Court having fully considered plaintiff's arguments in reply, and oral arguments having been heard in open court on April 21, 1986, and

The Court having initiated its own dispositive motion and order on or about May 7, 1986,

IT IS ORDERED that Muskegon County Circuit Court Action 73-C-7432-CK be consolidated with the instant case 86-21207-CZ, and

IT IS FURTHER ORDERED, in accordance with this Court's findings on the record, together with this Court's Opinion and Order of May 7, 1986, that plaintiff's claims be dismissed with full prejudice, but without costs, and plaintiff's emergency motion and objection to the entry of this judgment order are denied, and

IT IS FURTHER ORDERED that plaintiff not submit any further documents or pleadings to be filed in Muskegon Circuit Court in these consolidated matters.

s/HON. MICHAEL E. KOBZA, Circuit Judge"
(On CULVER LAGUE & McNALLY stationery).

6/20/86:

"THE COURT: You do not have a right to pick your oppnents' counsel." County Judge Kobza's 6/20/86 Hearing.

6/30/86

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Entered 6/30/86

DONALD EDGAR JOHNSON,
Plaintiff-Appellant, SC: 78441
COA: 88008
v.
MICHAEL E. KOBZA; CARL ALFRED JOHNSON;
RICHARD GORDON JOHNSON;
CARL ALFRED JOHNSON, JR.;
LANDMAN, LATIMER, CLINK & ROBB; and WILLIAM F. McNALLY, et al, Defendants-Appellees.

"On order of the Court,the delayed application in propria persona for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

10/22/86

"At A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN No.92822
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. Entered 10/22/86
RICHARD GORDON JOHNSON,
CARL ALFREDJOHNSON, JR.,
and the Estte of CARL A. JOHNSON, SR.,
Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

In this cause, plaintiff-appellant has filed a motion to compel the trial court to re-accept trial exhibits, and no answer thereto having been filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion be, and the same is hereby DENIED."

2/25/87-5/6/88 State Court Of Appeals (1) Denied Don's Motion To Compell Transmission Of Complete-With-Evidence Record To State Court Of Appeals, And (2) Denied Evidentiary Hearing:

COURT OF APPEALS - STATE OF MICHIGAN
DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
V. 92822 FILED 2/25/87 L.C. 86 21207CZ
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and The ESTATE OF CARL A. JOHNSO, SR.,
Defendants-Appellees,jointly and severally,

"In this cause, plaintiff-appellant, has filed a motion to compel the transmission of the lower court record in Muskegon County Circuit Court No. 73-C7432 to this Court, and a motion to expedite and no answer thereto having been filed, and due consideration thereof having been had by the Court; IT IS ORDERED that the motion be and the same is hereby DENIED at this time. The denial of the motion shall not bar this Court from requesting the transmittal of the record if the Court later determines that it needs the record in Muskegon County Circuit Court No. 73-C7432; IT IS FURTHER ORDERED that the motion to expedite be and the same is hereby DENIED."

5/22/87

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Barbara B. MacKenzie, P.J.

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

V. ENTERED 5/22/87 No. 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant has filed a motion to disqualify Chief Judge Danhof, and no answer in opposition thereto being filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion be, and the same is hereby DENIED."

6/15/87

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN

Barbara B. MacKenzie, P.J.

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

V. ENTERED 6/15/87 No. 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant has filed a motion for stay of proceedings, and a supplement to the motion, and second, third, fourth and fifth supplements to the motion, and no answer in opposition there being filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion for stay be, and the same is hereby DENIED."

11/18/87

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Daniel F.Walsh, P.J.

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

V. ENTERED 11/18/87 No. 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant having filed a motion for peremptory reversal pursuant to MCR 7.211(C)(4), and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for peremptory reversal be, and the same is hereby DENIED for failure to persuade the Court that reversible error is so manifest that an immediate reversal of the judgment appealed from should be granted without formal argument or submission."

1/11/88

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Daniel F.Walsh, P.J.
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
V. ENTERED 11/18/87 No. 92822
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

"In this cause a motion for miscellaneous relief is filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion be, and the same hereby DENIED."

3/3/88 State Court Of Appeals Without Reviewing Plaintiff's Evidence Affirmed Judge Kobza's Granting Deft Culver And Deft O'Toole Law Firm Partnerships' Motions For Summary Disposition Of Consolidated Cases Nos. 73-C7432-CK And 86-21207-CZ, LIED That Plaintiff Failed To Cite Any Authority In Support Of His Request For An Order Directing County Trial Court To Deliver 1974 Trial Exhibits To Court Of Appeals:

COURT OF APPEALS - STATE OF MICHIGAN
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. 92822 FILED 3/3/88
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and The ESTATE OF CARL A. JOHNSO, SR., jointly and severally, Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

"PER CURIAM: Plaintiff-appeals as of right from a June 20, 1986 order granting defendants' motion for summary disposition pursuant to MCR 116(C)(8) and dismissing plaintiff's complaint. Initially we note that although defendants brought their motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief may be granted, a review of the trial judge's decision reveals that he looked beyond the pleadings in deciding defendants' motion. Therefore, we will construe the order granting summary disposition as one granted pursuant to MCR 2.116(C)(10), no genuine issue of material fact. Huff v Ford Motor Co. 127 Mich App 287, 338 NW2d 387 (1983).

A motion for summary disposition premised upon MCR 2.116(C)(10), no genuine issue as to any material fact, requires the trial court to review he entire record to determine whether the nonmoving party has discovered facts to support the claim or defense. In reviewing the evidentiary record, the trial court must give the benefit of any reasonable doubt to the nonmoving party. Before judgment may be granted, the court must be satisfied that it is impossible for the claim asserted to be supported by the evidence at trial. Huff. supra.

A review of the record in the instant case convinces us that the trial court properly granted defendants' motion for summary disposition. Plaintiff's alleged 'independent action' alleging fraud on the court was nothing more than a laundry list of findings of fact made at the conclusion of a 1974 trial on plaintiff's original complaint against defendants. These findings were made at the conclusion of the 1974 trial and at the conclusion of the numerous subsequent post-judment motion hearings. The trial court has had several opportunities to review plaintiff's claims in one form or another over the 14 years this plaintiff has kept the instant actions alive. Every decision made by the trial court has been appealed to this Court.

Some of these decisions were appealed to the U.S. Supreme Court. We believe the trial judge correctly determined that this claim 'has been litigated to death.' Summary disposition was proper.

Plaintiff also seeks an order directing the lower court to deliver to this Court the 1974 trial exhibits. However, plaintiff's failure to cite any authority in support of his request precludes appellate review of the same. Tringali v. Lal, 164 Mich App 299; 416 NW2d 117 (1987). Moreover, because summary disposition was proper, this issue has become moot.

Affirmed."

4/25/88 State Probate Court Dismissed Don's $500,000+ 1986 Priority Claim, As If It Was A $1,500,000 Claim, Against Deft Carl-Sr's $450,000 Undervalued Estate Represented By "FMB Lumberman's" Bank's (Not Deceased Carl A. Johnson, Sr-Chosen "LUMBERMAN'S Bank's) Personal Representative Respondent Atty O'TOOLE Firms Who Represented Both The Joint Venture Buyers-Disguised-As-Moneylenders And Sellers Of The Public Nightclub Overvalued Liquor Licenses:

"STATE OF MICHIGAN - IN THE PROBATE COURT FOR THE COUNTY OF MUSKEGON ****** In the Matter of the Estate of CARL A. JOHNSON, SR., Deceased

File No. 86-59607-SE

"ORDER ALLOWING SECOND ANNUAL AND THIRD AND FINAL ACCOUNTS OF PERSONAL REPRESENTATIVE, DISMISSING CLAIM, ALLOWING FEES OF FIDUCIARY AND OF ATTORNEYS, PAYMENT OF PARTIAL DISTRIBUTION, DISCHARGING SURETY BOND, ASSIGNING RESIDUE AND CLOSING OF ESTATE

At a session of said Court held in the Courmty Building in the City and County of Muskegon, State of Michigan, on the 25th day of April, 1988.

PRESENT: HONORABLE TOM H. LINCK, NEIL G. MULLALLY, Judge of Probate JUDGE.

This day having been appointed for hearing the petition of FMB-Lumberman's Bank, Personal Representative of said estate, requesting (1)

the allowance of its Second Annual and Third and Final Accounts covering the period from February 1, 1967 through March 7, 1988, (2) the dismissal of the claim of Donald E. Johnson, (3) payment of partial distribution to Donald E. Johnson, (4) the allowance of the fees of said Personal Representative and of its Attorneys, O'Toole, Johnson, Potter, Rolf, Grafton & Eklund, (5) cancellation of the bond heretoforefiled, (6) assignment of residue and (7) closing of estate; and due notice of the hearing on said accounts and petition having been given as directed by said Court, the said petitioner appeared by their attorney, Thomas J. O'Toole, of O'Toole, Johnson, Potter, Rolf, Grafton & Eklund, and the Court being fully advised in the premises.

It appearing to the Court after due examination of said accounts and petition that said accounts are correct and ought to be allowed.

It further appearing to the Court that said deceased died on the 14th day of January, 1986, that the expenses of administrtion (except for final attorney fees, additional Court costs, recording fees, any fiduciary income tax liability, any additional Michigan Inheritance Taxes and any miscellaneous closing costs) and all claims allowed against said estate, except for the claim filed against said estate by Donald E. Johnson, have been paid.

It further appearing to the Court that partial distribution of the total sum of $300,000.00 was previously made to the residuary legatees (except for the distributive share of $30,000 to Donald E. Johnson) pursuant to Order Allowing Partial Distribution entered with the Court on June 2, 1987.

It further appearing to the Court that pursuant to said Order Allowing Partial Distribution dated June 2, 1987, Carl A. Johnson, Jr., Richard G. Johnson, Calvin B. Johnson, Randy Johnson and Darlyn Jo Johnson, filed Surety Bond indemnifying the Personal Representative against future claims for debts, allowances, expenses, inheritance and estate

taxes or part thereof.

It further appearing to the Court that the claim filed against said estate by Donald E. Johnson, has been disposed of by Summary Judgment by Opinion of the State of Michigan Court of Appeals, No. 92822 dated March 3, 1988.

It further appearing to the Court that the proceedings required by law for the proper administration and settlement of said estate have been taken, and that there remains to be assigned to the residuary legatees named in Paragraph III of the Codicil to Will of said deceased, a residue of the personal estate of the value of Forty Thousand Nine Hundred Fifty-Seven and 46/100 ($40,957.46) Dollars, less payment of the sum of $30,000 to Donald E. Johnson representing partial distribution of 10% of $300,000 previously reserved pursuant to Order entered with the Court on June 2, 1987, for a total residue of $10,957.46, less the payment of final attorney fees, additional court costs, recording fees, any fiduciary income tax liability, any additional Michigan Inheritance Taxes and less any miscellaneous closing costs, and no real estate.

IT IS ORDERED that the Second Annual and Third and Final Accountings of said Personal Representative, covering the period from February 1, 1987 through March 7, 1988, be and the same is hereby allowed.

IT IS ORDERED that the claim filed against said estate by Donald E. Johnson, in the total sum of $1,500,000.00, is hereby dismissed with prejudice pursuant to Summary Judgment by Opinion of the State of Michigan Court of Appeals, No. 92822 dated March 3, 1988.

IT IS ORDER that the fees of FMB-Lumberman's Bank, in the total sum of $7,235.50, for services rendered during the period covering said accounts, be and the same is hereby allowed.

IT IS ORDERED that the attorney fees requested by O'Toole, Johnson, Potter, Rolf, Grafton & Eklund, in the total sum of $6,599.86, for services rendered, be and the same is hereby

allowed.

IT IS ORDERED that the sum of $30,000.00 be paid to Donald E. Johnson, representing his distributive share of the partial distribution of $300,000.00.

IT IS ORDERED that the Surety Bond of Carl A. Johnson, Jr., Richard G. Johnson, Calvin B. Johnson, Randy Johnson and Darlyn Montoya, as Principals and Carl A. Johnson, Jr. and Richard G. Johnson as Sureties, to the Honorable Tom H. Linck, Probate Judge, as Obligee, be cancelled.

IT IS ORDERED that the residue of said estate of which said deceased died seized, less the payment of final Attorney fees, additional Court costs, recording fees, any Fiduciary income tax liability, any additional Michigan Inheritance Taxes, and less any miscellaneous closing costs, is assigned and distributed to the following residuary legatees, according o law and the Last Will and Testament of said deceased, to each the following part of proportion there, to-wit:

Carl Johnson, Jr. 20% thereof	$ 2,191.49
Calvin B. Johnson 40% thereof	4,382.98
Richard G. Johnson 20% thereof	2,191.49
Donald E. Johnson 10% thereof	1,095.76
Randy Johnson 5% thereof	547.87
Darlyn Jo Johnson 5% thereof	547.87
*Total	$10.957.46

*less costs as hereinabove stated

IT IS FURTHER ORDERED that upon filing proper vouchers and receipts showing the distribution of the residue of said estate in accordance with this Order, that said Personal Representative be discharged, its acceptance of trust be cancelled, its letter of authority heretofore granted be revoked and annulled and said estate be closed.

s/TOM H. LINCK, Judge of Probate"

2/2/89

MICHIGAN SUPREME COURT - Order Entered 2/2/89

DONALD EDGAR JOHNSON,
Plaintiff-Appellant SC: 83419
V. COA: 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON,JR., and THE ESTATE OF CARL A. JOHNSON, SR., Defendants-Appellees. LC: 86-59607-SE

"On order of the Court,the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

4/14/89

MICHIGAN SUPREME COURT - Order Entered 4/14/89

DONALD EDGAR JOHNSON, Plaintiff-Appellant SC: 83419

V. COA: 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON,JR., and THE ESTATE OF CARL A. JOHNSON, SR., Defendants-Appellees.

"On order of the Court, the orders of February 2, 1989 and March 29, 1989 are hereby amended to correct a clerical error by correcting the notation of the lower court docket number to read as follows: "LC: 86-021207-CZ".

7/31/89

MICHIGAN SUPREME COURT - Order Entered 7/31/89

DONALD EDGAR JOHNSON, Plaintiff-Appellant SC: 83419

V. COA: 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON,JR., and THE ESTATE OF CARL A. JOHNSON, SR., Defendants-Appellees. LC: 86-21207 CZ

"On order of the Court, the motion for stay of this Court's order of March 29, 1989 is considered, and it is DENIED."

6/5/89 Deft Judge Danhof Denied Appeal Of Right Of 4/25/88 Denial Of Estate Claim:

"STATE OF MICHIGAN - COURT OF APPEALS - 108452

FILED 6/5/89 **ROBERT J.DANHOF, ChiefJudge**

RE ESTATE OF CARL A. JOHNSON, SR.

L.C. 86 509607 SE

"The Court orders that the motion to remand

is DENIED for failure to persuade the Court of the necessity of a remand at this time."

7/2/89

STATE OF MICHIGAN - COURT OF APPEALS

In the Matter of the Estate of
CARL A. JOHNSON, SR., Deceased JUL 07 1989
DONALD EDGAR JOHNSON, Claimant-Appellant,
No. 108452
V.
FMB LUMBERMAN'S BANK, Personal Representative of the Estate of Carl A. Johnson, Sr., Deceased, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., RANDY JOHNSON, and DARLYN JO MONTOYA,
Petitioners-Appellees.

Before: Danhof, C.J., and Wahls and Griffin, JJ. L.C. 86 509607 SE

"PER CURIAM:.

Claimant Donald Johnson appeals as of right from an April 25, 1988, Muskegon Probate Court order allowing the second annual and third and final annual accounts of the personal representative of the estate of Carl A. Johnson, Sr., dismissing claimant's claim against the estate, allowing fees of fiduciary and of attorneys, allowing payment of partial distribution, discharging a surety bond, assigning the residue and closing the estate. We affirm.

Claimant contends that because evidence was presented that his claim was based on another suit which was pending on appeal, the estate'counsel committed frauds upon the probate court by stating that his claim should be dismissed based on res judicata. Claimant further contends that the lower court erred in dismissing his claim. This Court addressed the other suit in Johnson v Johnson, unpublished opinion per curiam of the Court of Appeals, decided March 3, 1988, (Docker No. 92822), lv den 432 Mich 858 (1989), reconsideration denied 432 Mich 858 (1989).

This Court stated:

A review of the record in the instant case convinces us that the trial court properly

granted defendants' motion for summary disposition. Plaintiff's alleged "independent action" alleging fraud on the court was nothing more than a laundry list of findins of fact made at the conclusion of a 1974 trial on plaintiff's original complaint against defendants. These findings were made at the concolusion of the 1974 trial and at the conclusion of the numerous subsequent post-judgment motion hearings. The trial court has had several opportunities to review plaintiff's claims in one form or another over the fourteen years this plaintiff has kept the instant action alive. Every decision made by the trial court has been appealed to this Court. Every decision of this Court has been appealed to our Supreme Court. Some of these decisions were appealed to the United States Supreme Court. We believe the trial judge correctly determined that this claim "has be litigated to death." sumary disposition was proper.

The res judicata doctrine provide that, where two parties have fully litigated a particular claim and a final judgment has resulted, the claim may not be relitigated by either party. Van Deventer v Michigan National Bank, 172 Mich App 456, 463; __ NW2d __ (1988); DeCare v American Fidelity Fire Ins. Co. 139 Mich App 69,77; 360 NW2d 872 (1984), lv den 422 Mich 933 (1985). There are three prerequisites to the application of the res judicata doctrine: (1) there must have been a prior decision on the merits; (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action, and (3) both actions must be between the same parties or their privies. Sloan v Madison Heights, 625 Mich 288,295; 389 NW2d 418 (1986); Decare, supra, p 77.

Michigan courts apply the res judicata doctrine boadly so as to bar claims that were actually litigated as well as claims arising out of the same transaction which a plaintiff

could have brought, but did not. Gose v Monroe Auto Equipment Co., 409 Mich 147,160; 294 NW2d 165 (1980); Michigan Oil Co. v. Dep't of Natural Resources, 148 Mich App 745,753; 384 NW2d 77 (1985).

The record demonstrates that the estate's counsel did not commit a fraud on the lower court. The court dismissed claimant's claim on the basis of res judicata after finding that claimant had not presented anything other than his claims which had previously been litigated. The lower court did not err in dismissing claimant's claim.

Claimant contends that the estate's counsel was unqualified and the the lower court erred in ruling that claimant could not move to disqualify the estate's counsel. The lower court did not allow claimant to argue about the disqualification of the estate's counsel because he had previously litigated this matter. Res judicata barred claimant from relitigating his claim that the estate's counsel should be disqualified. The lower court did not err.

Claimant's final contention is that he is entitled to accrued interest on his share of the estate from the date of partial distribution. The lower court did not address this matter. Therefore, we decline to review it. Providence Hospital v National Labor Union Health & Welfare Fund, 162 Mich App 191,194; 412 NW2d 690 (1987).

Affirmed. s/Robert J. Danhof, Myron H. Wahls, Richard Allen Griffin."

7/31/89 Michigan Supreme Court Affirmed "Danhoff" Infirm Decisions Regarding Consolidated 73 C7432 CK And 86-21207 CZ:

MICHIGAN SUPREME COURT - Order Entered 7/31/89

DONALD EDGAR JOHNSON,
Plaintiff-Appellant, SC: 83419
v. COA: 92822
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR., L.C. 86-21207-CZ
Defendants-Appellees.

"On order of the Court, the motion for stay of this Court's order of March 29, 1989 is considered, and it is DENIED."

11/29/89

SUPREME COURT OF MICHIGAN - Order 11/29/89
In re Estate of CARL A. JOHNSON, SR., Deceased
DONALD EDGAR JOHNSON, SC: 87252
Claimant-Appellant, COA: 108452
v. L.C. 86-59607-SE
FMB LUMBERMAN'S BANK, Personal Representative of the Estate of Carl A. Johnson, Sr., Deceased, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., RANDY VAN JOHNSON, and DARLYNN JO JOHNSON,
Petitioners-Appellees.

"On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

12/2/89 U.S. Supreme Court No. 88-2116 DENIED Certiorari To Michigan Appellate Courts Regarding County Circuit Court 73-C7432-CK Consolidated With 86-21207-CZ.

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APPENDIX C: 1970-98 DENIED REHEARINGS:

3/19/75

State Of Michigan-Court of Appeals
22496

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
V
CARL ALFRED JOHNSON SR, et al, Defendants Appellees.
L.C.73 C7432CK

"...application for rehearing of * * * previous order denying the furnishing of a transcript to the plaintiff having been filed by plaintiff, and nothing having been filed in opposition thereto * * * DENIED for lack of merit in the grounds presented."

2/5/76

U.S. COURT OF APPEALS FOR SIXTH CIRCUIT
FILED JUL 21 1977 No. 77-1346

DONALD EDGAR JOHNSON,Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON SR., ET AL.,
Defendants-Appellees O R D E R

In this cause this Court having issued an order on September 24, 1975 denying the defendants-appellees' motion to dismiss and the defendants-appellees having filed a motion for reconsideration of this Court's order denying the motion to dismiss, and various motion for leave to use proposed capsule statment of proceedings having been filed by the plaintiff-appellant, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for reconsideration be, and the same is hereby GRANTED,

IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed in the trial court.

IT IS FURTHER ORDERED that the various motions for leave to use various proposed capsule statements of proceedings filed by the plaintiffappellant be, and the same are hereby DENIED."

2/25/76

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN 56870

DONALD EDGAR JOHNSON,
Plaintiff Appellant, COA: 22496
LC: 74-7432
v
CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"On order of the Court, the motion in pro per by plaintiff-appellant for reconsideration of this Court's order of July 2, 1975, is considered and the same hereyb is DENIED, because it does not appear that said order was entered erroneously."

8/4/76

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN 56870

DONALD EDGAR JOHNSON,
Plaintiff Appellant, COA: 22496
v LC: 74-7432
CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"On order of the Court, the ex parte motion by plaintiff-appellant, in pro per, for reconsideration of motions, is considered and the same is hereby DENIED, as it is not appropriate under the General Court Rules."

8/18/76

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN 58097

DONALD EDGAR JOHNSON,
Plaintiff Appellant, COA: 22496
v LC: 73-C-7432
CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"On order of the Court, the motion in pro per by plaintiff-appellant for recondsideration of this Court's order of May 26, 1976, is considered and the same is hereby DENIED, because it does not appear that said order was entered erroneously.

Plaintiff-appellant's motion to add certain defendantsl-appellees, and his motion for appointment of counsel, are also considered, and the same are hereby DENIED."

6/21/77

U.S. COURT OF APPEALS FOR SIXTH CIRCUIT
FILED JUL 21 1977 No. 77-1346

DONALD EDGAR JOHNSON,Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON SR., ET AL.,
Defendants-Appellees O R D E R

"Upon consideration of the appellant's motion for accelerated determination, correction of the record and to proceed on the original record with filing an appendix,

IT IS ORDERED that the motion be and it hereby is denied.

Appellant's motion for leave to make minor corrections to his brief is granted."

9/12/77

State Of Michigan-Court of Appeals 22496
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, a motion for reconsideration of this Court's order of August 17, 1977, is filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED tha the motion for reconsideration be, and the same is hereby DENIED. Judge Michael D. O'Hara not participating."

12/18/78

State Of Michigan-Court of Appeals 22496
"Robert J. Danhof, C.J., Presiding Judge
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. L.C. No. 73-7432 CK
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

In this cause an application for rehearing of order of November 14, 1978 has been filed by the plaintiff-appellant and no answer in opposition thereto having been filed, and due consideration thereof being had by the Court,

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED."

1/18/79

State Of Michigan-Court of Appeals 22496
"Robert J. Danhof, C.J., Presiding Judge
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, a second application for rehearing of the (11/15/78) denial of disqualification of defendants-appellees' law firm) * * * IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for lack of merit in the grounds presented."

12/4/79

State Of Michigan-Court of Appeals 45093

Robert J. Danhof, C.J., Presiding Jude

DONALD EDGAR JOHNSON,
Plaintiff-Appellant, L.C. No. 73-C7432 CK

v.

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally,
Defendants-Appellees.

"In this cause an application for rehearing has been filed by the plaintiff-appellant and no answer in opposition thereto having been filed, and due consideration thereof being had by the Court. IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED."

1/26/83

State Of Michigan-Court of Appeals 59895

DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

LC: 73 C7432 CK

"...[I]n this cause an application for rehearing is filed by plaintiff-appellant, and no answer to in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED."

11/29/83

State Of Michigan-Court of Appeals 50565

JOHN H. SHEPARD, Presiding Judge

DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON

JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

LC: 73-C7432 CK

"In this cause plaintiff-appellant has filed an application for rehearing of this Court's order of September 23, 1983, granting the motion for immediate consideration and denying the application for leave to appeal, and no answer to the application for rehearing having been filed, and due consideration of the foregoing having been had by the Court, IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for the reason that more than one year having elapsed from the date of judgment, plaintiff is required to file an independent action, GCR 1963, 528.3."

4/27/84

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN 73254

DONALD EDGAR JOHNSON,
Plaintiff Appellant, COA: 50565

v LC: 73-C7432-CK

CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"On order of the Court, the motion in propria persona by plaintiff-appellant for reconsideration of this Court's order of January 30,1984, is considered, and the motion is DENIED, because it does not appear that said order was entered erroneously.

Further, the Clerk is directed to refuse to accept for filing any further pleadings in this matter from the plaintif-appellant, including the filing of a motion for reconsideration of this order, GCR 1963, 861.5."

10/31/84 NO JUDGE'S NAME SHOWN

State Of Michigan-Court of Appeals 78170

DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, an application for rehearing of this Court's order of September 20, 1984, denying an application for leave to appeal

having been filed by plaintiff-appellant, and no answer in oposition thereto having been filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for lack of merit in the gounds presented.

IT IS FURTHER ORDERED that the Clerk is directed to refuse to accept for filing any furthe pleadings in this matter fom plaintiff-appellant, including a filing of an application for rehearing of this order. GCR 1963, 816.5."

6/25/85

AT A SESSIN OF THE SUPREME COURT OF THE STATE OF MICHIGAN

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 75403
COA: 78170
LC: 73-C7432-CK

v.

CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"On order of the Court, the motion for reconsideration of this Court's order of March 28, 1985 is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

3/18/86 NO JUDGE'S NAME SHOWN!

"State Of Michigan-Court of Appeals 88008

DONALD EDGAR JOHNSON, Plaintiff, v
MUSKEGON CIRCUIT JUDGE, CARL ALFRED JOHNSON, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., LANDMAN LATIMER CLINK & ROBB, Law Firm Partnership and WILLIAM F. McNALLY, Defendants.

L.C.73 C7432CK+86 21207CZ

In this cause a motion for rehearing is filed by defendant-appellant, and no answer inopposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion for rehearing be, and the same is hereby DENIED.

Judge Shepherd would grant."

4/28/87 NO JUDGE'S NAME SHOWN!

"IN THE MICHIGAN COURT OF APPEALS
ORDER April 28, 1987

Re: Donald Edgar Johnson
v. Docket No. 92822,
Richard Gordon Johnson,
L.C.73 C7432CK+86 21207CZ

"Robert J. Danhof, Chief Judge acting pursuant to MCR 7.211(E)(2), hereby orders: the motion for immediate consideration is DENIED."

7/21/87

IN THE MICHIGAN COURT OF APPEALS
ORDER April 28, 1987

Re: Donald Edgar Johnson, Plaintiff-Appellant,
v. Docket No. 92822
Richard Gordon Johnson, CARL ALFRED JOHNSON, JR., and the ESTATE OF CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant has filed a motion for rehearing, and now answer in opposition thereto being filed, and due consideration thereof having been had by the Court;

IT IS ORDERED tht the motion be, and the same is hereby DENIED."

5/6/88

IN THE MICHIGAN COURT OF APPEALS
ORDER April 28, 1987

Re: Donald Edgar Johnson, Plaintiff-Appellant,
v. Docket No.92822
Richard Gordon Johnson, CARL ALFRED JOHNSON, JR., and the ESTATE OF CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

"This Court orders that the motion for rehearing is denied."

9/8/89 Wrong Lower Court Numbers. Should Be "L.C. #86 509607 SE":

Court of Appeals - State of Michigan 108452
Robert J. Danhof, C.J., Presiding Judge
In The Matter Of Estate Of Carl A. Johnson, Sr.
L.C. # 73-C7432 CK, 86-21207 CZ

The Court orders that the motion for rehearing is DENIED." s/ROBERT J. DANHOF

10/13/89

Court of Appeals - State of Michigan 108452
Robert J. Danhof, C.J., Presiding Judge
In The Matter Of Estate Of Carl A. Johnson, Sr. L.C. # 73-C7432 CK, 86-21207 CZ

The motion to correct the order of September 8, 1989 is GRANTED, and the lower court number on that order is corrected to 86-59607-SE. In all other respects, the motion is denied."

9/27/91 6th Cir. Court Of Appeals 91-1160, Including Judge NORRIS Who Was On 97-1944 Panel Of 2/10/98 Judgment Herein For Review, Denied Rehearing En Banc:

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
91-1160
DONALD EDGR JOHNSON FILED 9/27/91
Plaintiff-Appellant, LEONARD GREEN, Clerk
v
RICHARD GORDON JOHNSON, ET AL., ORDER
Defendants-Appellees

BEFORE: KEITH and NORRIS, Circuit Judges; and Weber, U.S. District Judge

"The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and cncludes that the issues raised in the etition were fully considered upon the original submission and decision of the case. Accordingsly, the petition is denied.

ENTERED BY ORDER OF THE COURT
s/LEONARD GREEN, Clerk

*Hon. Herman J. Weber sitting by designation from the Southern District of Ohio."

3/10/93 6th Cir. Court Of Appeals 92-1829 Denied Rehearing Of 12/23/92 Decision While Stating, "Judge Engel Recused Himself When This Case Was Originally Heard December 11, 1992":

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON AND CLASS OF PRO SE NONLAWYER ALLEGED CONFIDENCE GAME VICTIMS,

Plaintiff-Appellant, 92-1829

V. Filed Mar 10 1993

RICHARD GORDON JOHNSON, et al,

DefendantsAppellees O R D E R

BEFORE: KENNEDY and BATCHEDLER, Circuit Judges, and BROWN, Senior Circuit Judge

"The appellant has petitioned the court to rehear its decision of December 23, 1992, affirming the orders of the district court denying appellant relief sought pursuant to Fed. R. Civ. P. 60(b). Susequent to the filing of the petition for rehearing, appellant filed a petition for rehearing en banc, a motion to recuse Judge Engel, and a motion to amend the caption.

After careful consideration of the petition for rehearing, the panel concludes that it has not overlooked or misapprehended any point of law or fact in the order of December 23, 1992. It is therefore ordered that the petition for rehearing is denied.

Judge Engel recused himself when this case was originally heard December 11, 1992. Therefore, the motion to recuse is denied as moot. The petition for rehearing en banc is denied on the ground that appellant did not file the required number of copies of the petition. 6th Cir. R. 14. The motion to amend the caption is denied."

7/9/93 1964-65 Perpetrator Who Became 6th Circuit Court Of Appeals Judge INTERVENED ON THE DECISION-MAKING ORIGINAL PANEL As Shown By Re-Denial Of Rehearing:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

92-1829 Filed Jul 9 1993

DONALD EDGAR JOHNSON AND Class of Pro SE Nonlawyer Alleged Confidence Game Victims,

Plaintiff-Appellant,

V. ORDER

BEFORE: KENNEDY and BATCHELDER, Circuit Judges, and BROWN, Senior Circuit Judge.

"The court having recived a petition for rehearing en banc, and the peititon haveing been circulated not only to the original panel members but also to all other active jduges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.[n]

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

[n]The original panel included Judge Engel."

4/29/94 Mich. Supreme Court Case No. 97521 Denied Rehearing Of 2/25/94 Denial Of Leave To Appeal Probate Court's Dismissal Of Don's Claim And Closing The Estate:

"ORDER

Michigan Supreme Court
Lansing, Michigan
97521 (43)

Entered April 29, 1994

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v.

SC: 97521
COA: 158359
LC: 92-29070 AV

ESTATE OF CARL A. JOHNSON SR.,
Defendant-Appellee.

"On order of the Court, the motion for reconsideration of this Court's order of February 25, 1994, is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

11/28/94 U.S. Supreme Court 94-146 Denied Rehearing Of 10/3/94 Denial Of Petition For Mandamus To Michigan Supreme Court 97521 Allegedly Because Issue Of District Judge Gibson's Disqualification Was Unresolved:

6/6/95 6th Cir. Court Of Appeals 94-2305 Denies Reconsideration Except For Correction From 12/12/90 To 12/19/90 Date:

No. 94-2305

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

Filed JUN 06 1995

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. RICHARD GORDON JOHNSON, et al, Defendants-Appellees.

O R D E R

Before: MARTIN and RYAN, Circuit Judges, and GILMORE, District Judge.*

"The plaintiff moves for reconsideration of an order which denied his motion for a stay of the district court's judgment. Upon consideration, we note the original order incorrectly stated that the judgment which the plaintiff sought to stay was entered on December 12, 1990, when in fact it was entered on December 19, 1990. In all other respects, however, the motion to reconsider is DENIED.

ENTERED BY ORDER OF THE COURT
s/Leonard Green/??, Clerk

*The Honorable Horace W. Gilmore, United States District Judge for the Eastern District of Michigan, sitting by designation."

8/25/95 6th Cir. Court Of Appeals 94-2305 Denied Rehearing Of 6/27/95 Denial Of FRCVP 60(b)(6) Relief:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 94-2305 FILED AUG 25 1995

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v.
RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; ESTATE OF CARL A. JJOHNSON SR.; LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK AND ROBB; CULVER, LAGUE AND MCNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE, JOHHON POTTER, ROLF GRAFTON& EKLUND, P.C.; STATE OF MICHIGAN; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge, jointly and severally, Defendants-Appellees.

"Upon consideration of the petition for rehearing filed by the appellant, IT IS ORDERED

that the petition for rehearing be, and it hereby is, DENIED."

6/12/97 6th Cir. Court Of Appeals 96-1826/1979 Denied Petition For Rehearing En Banc:

Nos. 96-1826/1979

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED JUN 12 1997

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v. ORDER

RICHARD GORDON JOHNSON, ET AL.,
Defendants-Appellees.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were full considered upon the original submission and decision of the case. Accordingly, the petition is denied."

4/23/98 6th Cir. Court of Appeals 97-1944 Denied Rehearing Of 2/10/98 Dismissal Of Appeal Of District Judge Gibson's ,Scheduling A Contempt Hearing Rather Than A First Time Hearing To Review Plaintiff's Constitutional Claims And Determine If There Should Be A Three Judge Court:

"Nos. 97-1944,97-1955 & 97-2062

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED APR 23 1998

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v. O R D E R

RICHARD GORDON JOHNSON, ET AL.,
DefendantsAppellees.

Before MARTIN, Chief Judge, NORRIS AND CLAY

"Plaintiff-appellant has filed a petition for rehearing and supplement to the petition seeking reconsideration of this court's order of February 10, 1998 dismissing the appeals

for lack of jurisdiction.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is denied."

12/23/98 "98-2190

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: DONALD EDGAR JOHNSON, Petitioner. FILED DEC 23 1998 LEONARD GREEN, Clerk

O R D E R

BEFORE: JONES, RYAN, and BATCHELDER, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT
Leonard Green/??, Clerk"

=

APPENDIX D: HOW, WHEN, AND WHERE FEDERAL QUESTIONS WERE RAISED AND PASSED ON IN STATE COURTS.

2/25/74

"THE PLAINTIFF: Your Honor, you have the cart before the horse. Wrong. First the charges, then the answer, then the trial, whereas, in fact, I am asking the Court to go the legal way, the way the law prescribes, due process, cause the defendants to answer the charges, admit or deny them, and then have the trial." 2/25/74 County Circuit Court 73-C7432-CK Judge Schoener Hearing, p 7. (Emphasis added).

11/27/74

"..And as far as I am concerned, you rested * * * You may not have ever used that form -- the words: 'I rest'; but * * * You have been saying it for two weeks, and I'm through!' (Whereupon the Judge walked off the Bench). 11/27/74 County Circuit Judge Piercey Hearing, Last Page.

12/9/74

"..[T]he plaintiff having presented evidence and rested his case * * * IT IS ORDERED, that defendants' Motion be and hereby is granted and Judgment of No Cause of Action be entered in favor of the Defendants.." 12/9/74 Judge Piercey #73-C7432-CK Dismissal.

2/25/75

"In this cause a motion is filed by paintiff-appellant to amend the Court's order of February 3, 1975, waiving fees on appeal, to specifically include the ordering of a transcript of the trial proceedings for the plaintiff, and an answer in opposition thereto having been filed by defendants, and due consideration thereof having been had by the Court; IT IS ORDERED that the motion be, and the same is hereby DENIED." 2/25/75 Mich Ct of Appeals #22496 Denial of Transcript Cost.

10/3/75

"In this cause a motion to dismiss the appeal having been filed by the defendant-appellees, and an answer and brief in opposition thereto, and a motion to remand to the lower court for further proceedings having been filed by the plaintiff-appellant, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion to dismiss be, and the same is hereby, DENIED for lack of merit in the grounds presented at this time, the question of the waiver of fees for the transcript currently being before the Supreme Court.." 10/3/75 Mich Ct of Appeals #22496, LC #73-C-7432CK.

12/29/77

"On order of the Court, the application in propria persona for leave to appeal and the emergency motion for prompt adjudication are considered. The emergency motion is GRANTED and the application is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court. 12/29/77 Mich Supreme Ct #60385, COA #22496, LC #C-7432-CK.

4/20/83

SUPREME COURT OF MICHIGAN

No. 71091
COA 59895
LC: 73-C-7432-CK

On order of the Court, the application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

5/3/83 Don And Assistant Attorney Emergency Motion For New Or Partially-New Trial:

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v.
CARL ALFRED JOHNSON, SR.,
A/K/A CARL ALFRED JOHNSON,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and Severally
Defendants-Appellees.

File No. 73 C7432 CK
Suprme Court 71091
Court of Appeals 59895

EMERGENCY MOTION FOR A NEW OR PARTIALLY-NEW TRIAL
Notice Of Hearing; Proof Of Service

Donald Edgar Johnson, In Pro Per
Attorney for Plaintiff-Appellant,
William F. McNally (P-17533) and
Landman Luyendyk Latimer Clink & Robb
Attorneys for Defendants-Appellees.

THIS PARTIALLY-LITIGATED 1973 CASE CONTESTS CUSTODY OF INTERSTATE KIDNAPPED MINOR CHILDREN AND ALLEGES CRIMES OF TAKING TOTAL PROPERTIES AND BASIC CONSTITUTIONAL

RIGHTS UNDER FALSE PRETENSES TO COVER UP A $30,000 FEDERAL TAX EVASION.

NOW COMES DONALD EDGAR JOHNSON, plaintiff-appellant in pro per with assistant attorney Gary L. Veurink, and moves the court to order a new or partially-new trial of the above-entitled action for one or more of the following causes:

1. **Irregularity in the proceedings of the court and prevailing party.** On first day of trial, 10/3/74, plaintiff in pro per with assistant attorney John B. Olsen was denied a jury and the County still has plaintiff's $30 jury demand fee that was timely paid and never refunded. The trial was but partially-recorded because (a) its first half hour was not recorded by stenographer Robert C. Fazio, and (b) the many hours of stipulation sessions seret from plaintiff in pro per between has assistant attorney Olsen and codefendants' Landman law firm were not recorded. It was an unfair trial because (a) all pretrial and trial requests for admissions snd discoveries were denied, (b) the trial Judge John H. Percey ordered frequent lengthy scattered secret-from-plaintiff-in-pro-per stipulation sessions that utilized in advance of proceedings plaintiff's pretrial-prepared chronological list of facts showing related exhibits (trial exhibit 1A) that enabled defendants' speedy coverup of vital points and drawn out presentation of side issues, (c) vital exhibits were rejected, (d) proceedings were somewhat slowed by Judge Piercey's ordering clerk to remove each exhibit from organized books brought in by plaintiff, and (e) plaintiff in pro per was denied so-called "editorial comments" as he presented testimony as if there would be time for a closing argument - then denied a bona fide closing argument to bag facts at end of testimony because there wasn't time for a closing argument. And a miscarriage of justice occured.

2. **An order of the court and the court's abuse of discretion which prevented the moving party from having a fair trial.** It was wrong for the court to (a) deny a jury for the question of damages from plaintiffs loss of his only 2 children who were interstate kidnapped and never seen or heard from for years, (b) deny that defendants answer none of several pretrial, trial, and post-trial requests for admissions and important discoveries, (c) deny adjudging that plaintiff owned substantial properties before and during the summer of 1964 when all parties went on a venture, (d) order valuable trial time to be used out of courtroom and presence of plaintiff in pro per by way of secret stipulation sessions between assistant attorney Olsen and opposing cousel - using plaintiff in pro per's detailed trial strategy papers for "staging" proceedings in defendants' favor where Olsen had been a member of opposing counsel's law firm and could collude to further his career at plaintiff in pro per's expense, (e) reject certain vital exhibits during the trial, (f) slow proceedings deliberately, then disallow their completion for lack of time, and (g) pretend that plaintiff in pro per had rested his case without a closing argument and over plaintiff's objection.

3. **A decision against the great weight of evidence and contrary to law.** Plaintiff had full custody of his only children who were minors for 10 years and they were interstate kidnapped and defendants and their conflicting debtor- creditor interests federal tax-evading Landman law firm caused the loss and a jury was denied contrary to laws and the Constitution. Trial Judge Piercey's interrupting for 30 days the trial at mid-point during which opposing counsel helped his 11/74 reelection to another term on the bench, then cutting short the trial and signing opponent counsel's phony dismissal as if there was no cause of action - was against a preponderance of evidence --

a. That plaintiff had 3½ years' full

custody of 9 years old daughter and 8 years old son plus substantial phono records-music publishing-real estate-cash properties worth up to a million dollard he went on a family phono records-music publishing-nightclub purchase joint venture about 8/20/64 when Landman Luyendyk Latimer Clink & Robb law firm partnership represented plaintiff potential Buyer and the potential Sellers of the Hoyt Street-Seaway Expressway nightclub real estate with over $25,000 federal liens on it,

b. That as all parties were represented by plaintiff who was represented by Landman law firms nightclub real estate Sellers' realtor Anthony J. Mark and no other law firm or lawyers, all parties went on a 15-years phono records music publishing-nightclub 15-years-land-contractpurchase family joint venture on 11/5/64 for purposes of financial gain and enhancin;g the way of life of plaintiff and his two small children who had an income of about $430 weekly just from plaintiff's travelng enterainer services, plus other phono records-music publishing incomes.

c.That defendants-appellees' present Landman Luyendyk Latimer Clink & Robb law firm partnership entered in Muskegon County Register of Deeds a false pretense on 3/8/65 that there were no federal liens on the nightclub being purchased by the family joint venturers in plaintiff's name until incorporation would be formed,

d. That between 8/20/64 start of joint venture and the 4/24/73 start of this case, defendants and said Landman law firm did take plaintiff's total very substantial worldwide properties and child custody assets into a family phono records-music publishing-nightclub joint venture under false pretenses (i) they would use plaintiff's short term promissory notes only as memos for collateral until incorporation and would put plaintiff's $2900 that defendants took full custody of about 10/1/64 into an immediate bank escrow account, (ii) there were no over $25,000 federal liens on nightclub to be purchased by the joint

venture escrow, and (iii) there would be fair equity in Michigan corporation(s) to be formed -- and (2) they fraudulently appropriated the joint venture assets without forming the corporation (a) via frauds on the plaintiff and this Muskegon Circuit Court (i) that defendants actually gave full custody of their money to plaintiff, not themselves, in exchange for his short term promissory notesmemos of collateral until incorporation, (ii) that there never was said 15-years joint venture and contract between plaintiff and defendants, (iii) that defendants were only short term money lenders with a valid $20,600 promissory notevalid motgage on nightclub real estate, (iv) that plaintiff was so stupid as to depart a lucrative career, invest his total assets, allow his phono records-music publishing assets to be stolen by Larnard and Larnard local law firm partnership, and invest 100 tedious hours weekly for 5½ years all by himself by way of solely his own decisions, not those of him, the defendants, and the Landman law firm, and (v) that defendants and their law firms never profited from taking said total assets from plaintiff and there was and remains no need for a bona fide accounting to anyone. And said swindle put plaintiff and his two 10 years full custody minor children on California public welfare which interstate-kidnapped his minor children on 6/19/71 and denied even public welfare benefits for over 3 months. And plaintiff's costly attempts to mitigate California damages were fruitless. And defendants and their Landman law firm unlawfully use plaintiff's power of attorney(s), breached contracts, fraudulently converted properties, and committed libel & slander,

e. That one of the reasons that nightclub operation under plaintiff's management and under defendants' over-management was that the area's competition at least tripled almost instantly and constantly from day one of nightclub's remodeling-opening on a shoestring for lack of ample working capital, and

f. The nightclub appreciated markedly during the venture. The trial court decision-12/9/74 was contrary to law because it is against the law to convert a man's substantial properties, breach contracts via fraud, commit libel & slander, take away a man's total properties and child custodys under false pretenses, and obstruct justice. So many laws were broken that they are too numerous to list here and now and they are already listed and quoted in the record on file in this court.

4. Material evidence, which could not with reasonable diligence have been discovered and produced at the trial. The following material evidence was discovered since the trial and immediately produced into the record: Proof that all Kandy Tapes & Records Corp. (Indiana) assets were properly affiliated with American Federaion of Musicians of United States and Canada where there is no record that they were ever owned by anyone other than plaintiff to this day and where no phono record company can transfer ownership of its recordings without going through said Federation in writing. Proof that defendant Carl Alfred Johnson, Jr. was solely to blame for the family joint venturers'allowing the Larnard and Larnard law firm to steal legal title to all 1956-1967 Kandy master recordings worth $40,000 to $1,000,000. Proof that there were bona fide federal liens on nightclub before 3/8/65 and after, but they were never paid to this day because of defendants' Landman law firm tax evasion of over $25,000 plus interest where plaintiff's power of attorney was used unlawfully. These proofs could not be produced at the trial because the American Federation of Musicians took too long to respond to plaintiff's many requests, defendant Carl-Jr's letter to plaintiff refusing to amend/correct the Larnard law firm's erroneous Kandy Tapes and Records Corp. (Michigan) name had been inadvertently lost among boxes and boxes of papers, and plaintiff had justifiably believed that now-Federal Judge Albert J. Engel, Jr. had been telling the truth on 4/6/65 when he

wrote that the abstracts of the nightclub title showed no federal liens, and plaintiff had been relieved of all ownership so that he couldn't obtain the many very old abstracts without being very lucky and spending substantial time and money not available during trial but available during January and February 1982 just after plaintiff bootstrapped himself off welfare-filed over $5,000 transcripts.

5. **Errors of law occuring in the proceedings and mistakes of fact by the court.** It was error of law for Judge Piercey to deny a jury for question of damages from loss of children and deny a fair impartial trial and it was mistake of fact for Judge Piercey to rule that there never was as joint venture or joint venture contract and plaintiff had no cause of action where defendants and their conflicting interests Landman law firm took plaintiff's total properties and child custodys via fraud and under false pretenses whether or not there ever was a joint venture or joint venture contract. Judge Piercey failed to uphold the Constitution despite his swearing that he would as he took on the position of Circuit Judge. **He denied Due Process, Equal Protection, and Just Compensation.** And it was mistake of fact on the Dismissal-12/9/74 to pretend that plaintiff lived at an address where he never set foot.

6. **On any ground warranting a new trial specified in sub-rule 528.3.** After Judge Piercey denied a new trial and after fraud was discovered about 2/22/82, plaintiff entered into the record positive proof of defendants' Landman law firm's over $30,000 federal taxes evasion by way of copies of old secretly hidden abstracts that were extremely hard to obtain. But Judge Piercey repeatedly knowingly and willfully denied plaintiff-appellant's filing any papers including another motion for a new trial up to this day including unfiled-but-preserved "Emergency Plaintiff-Appellant's Motion For A New Or Partially-New Trial; Notice Of Hearing; Proof Of Service" with letter to Judge Piercey dated 2/1/83. See Exhibit A

which is attached hereto. Plaintiff can swear under oath that he brought this letter and motion to Judge Piercey's secretary who followed Judge Piercey's orders not to set a hearing date, showed the papers to Judge Piercey, and returned them to plaintiff saying that the Judge would not allow the motion to be filed. Judge Piercey did not sign and file, or dictate to the stenographer, a concise statement of his reasons therefor and the court clerk did not notify the attorneys for both parties of the decision of the motion for a new trial - contrary to GCR 527.8. Judge Piercey subsequently resigned from the bench.

7. **On ground warranting a new trial where plaintiff-appellant has been denied Due Process-Equal Protection-Just Compensation** because the tax evading conflicting interests opposing counsel defrauded the state and federal courts that appellant was not a bona fide indigent deserving of requested suspension or waiver of meaningful transcripts cost within the GCR 806 18-months time limit. Defendants-appellees counsel, the Landman law firm, knowingly and willfully denied plaintiff-appellant of his Constitutional basic rights by blocking attempts to timely file the materials necessary to afford his requested appeal of right on merits of trial court Dismissal- 12/9/74. The record of this case and its causes show that 3 men and their huge powerful influential law firm took this plaintiff's total substantial worldwide properties and child custodys plus basic civil rights of fair trial and due process of reasonable timely access to state-established appellate court plus substantial government property -- under false pretenses. And they will get away with it unless this court grants a new or partially-new trial or some other court grants an over 18-months fraudulently-delayed appeal of right or new trial. And if the government denies Constitution-guaranteed civil rights, the government itself is guilty of manifest injustice by failing to uphold its Constitution.

8. On ground that trial court can grant a new trial during its concurrent jurisdiction of the case during perfection of a fradulently-delayed appeal of right until the complete record including full transcript is transmitted to appellate court pursuant to GCR 802.2(1) and before any higher court's interlocutory decisions become the law of the case.

This motion is based upon the files and records in the above-entitled action, upon the evidence and proceedings in the trial thereof, and upon plaintiff-appellant's affidavits and interlocutory proceedings to acquire either an appeal of right or a new trial.

Dated: May 3, 1983.

s/DONALD EDGAR JOHNSON, In Pro Per..."

5/10/83 Pltf's Case No. 73-C7432-CK Was Denied Due Process-Equal Protection Motion For New Trial's Evidentiary Hearing Due To Respondent LANDMAN Partnership's (Including Attys Culver & McNally) 6/6/83 FRAUD ON COURTS That "The Judgment From Which Plaintiff Johnson Seeks Relief Was Entered Many Years Ago, And The Full Appellate Process Has Been Exhausted":

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,

Plaintiff-Appellant,

v.

CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
jointly and severally,

Defendant-Appelles.

O R D E R

Circuit Court
File No. 73-C7432-CK

CALENDARED

The court has reconsidered the May 4, 1983 memorandum;

It is therefore ORDERED that the May 10. 1982 Order signed by Judge Piercey is reinstated.

The Clerk is instructed to return all pleadings and fees.

Dated: May 10, 1983.

s/RONALD H. PANNUCCI,
Chief Circuit Judge

cc: Mrs. Helen Crehan
Circuit Court Records
Mr. Donald E. Johnson
Mr. William F. McNally

I HEREBY CERTIFY etc."

5/20/83

"Said Order * * * Condones 3 Men And Their Agents' Taking Substantial Government Property Plus A Man's Total Worldwide Substantial Properties, Child Custodys, And Basic Constitutional Rights * * * Under False Pretenses". 5/20/83 Trial Court Motion To Rescind 5/10/83 Order Denying Evidentiary Hearing.

11/29/83

"..IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for the reason that more than one year having elapsed from the date of judgment, plaintiff is required to file an independent action, GCR 1963, 528.3." 11/29/83 Mich Ct of Appeals #50565, LC #73-C7432-CK.

2/15/84 Don's Rejected "Independent" Action:

STATE OF MICHIGAN - IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON:

DONALD EDGAR JOHNSON
Plaintiff,

File No._____
(Related To 73 C-7432 CK)

V.

ANTHONY J. MARK, A/K/A TONY MARK, LANDMAN, LUYENDYK, LATIMER, CLINK & ROBB, A Michigan Partnership, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., CARL ALFRED JOHNSON, A/K/A CARL ALFRED JOHNSON, SR., AND EX-MEMBERS OF LAW FIRM ATTORNEYS FRED C. CULVER, JR., WILLIAM F. McNALLY, WILLIAM M. NEWMAN, THOMAS M. BOVEN, WILLIAM T. KERR, Jointly and Severally,
Defendants.

"Felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson)."

s/Michael E. Kobza, Circuit Judge

"..IT IS FURTHER ORDERED that the Clerk is directed to refuse to accept for filing any further pleadings in this matter from plaintiff-appellant, including a filing of an application for rehearing of this order. GCR 1963, 816.5." 10/31/84 Mich Ct of Appeals "No Judge Listed" #78170, LC 73-C7432-CK.

3/28/85

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Entered 3/28/85

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 75403
COA: 78170
LC: 73-C7432-CK

v.
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees.

"On order of the Court, the application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court."

2/4/86:

"AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN. Held at the Court of Appeals in the City of Lansing on the 3rd day of February in the year of our Lord one thousand nine hundred and eighty six

DONALD EDGAR JOHNSON,
Plaintiff,

No. 88008

v.
MUSKEGON CIRCUIT JUDGE, CARL ALFRED JOHNSON, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., LANDMAN, LATIMER, CLINK & ROBB Law Firm Partnership, and William P. McNally,
Defendants.

In this cause a complaint for superintending control and motion for immediate consideration are filed by plaintiff, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the complaint for superintending control be, and the same is hereby DENIED for lack of merit in the grounds presented.

Judge Shepherd would order pursuant to MCR 7.206(B)(3) that the Muskegon County Circuit Court shall allow plaintiff to file an independent action based upon alleged fraud upon the Court, MCR 2.612(C)(3), provided that the requisite fees and costs are either paid, waived or suspended. By allowing plaintiff to file an independent action below, this Court expresses no opinion on the form and content of the pleadings which may be filed, merits of plaintiff's action or any defenses which may be raised..."

4/21/86:

"The Constitution says that when someone puts out, he is to get just compensation. If he puts it out to the public, he still supposed to be compensated justly. I entertained the public and what I put into it was taken away from me, many thousands and tens of thousands of dollars worth of effort and I never received just compensation. The case was brought before (trial) Judge Piercey and he went along with the powerful opposition . . . So Judge Piercey dismissed. Now, I brought before Judge Kobza, that's you, the situation whereby this dismissal in 1974 was procured by fraud upon the courts and prolonged for 11 years. There were parts of the case in the Court of Appeals, but the Court Appeals never received the record, the full record. So they never had a chance to examine the full picture of what was going on, and so I was never given an appeal of right nor was I given a delayed appeal (of right). When you denied me a new trial on the grounds of fraud upon the courts, I was still pursuing a delayed appeal of right in the upper courts. I wasn't through yet. And the record to this date has never left the trial court for

examination by any other court. . . . The Michigan Supreme Court had not yet finished reviewing the matter at a time when you denied my motion. . . And then in '84, you denied my (filing my) independent action. . . This court abused its discretion . . . This court refused to file an independent action. It did not act on it. It refused to even allow it to be filed. So how could this court properly review if they didn't allow it to be filed? . . . So because of the federal and state laws allowing frauds upon the courts to be aired before upholding the dismissal, this court must allow a hearing of my 12 frauds upon the courts filed in May of '83, and this Court must also uphold the United States Constitution which says just compensation for services rendered whether to private or public, and this court must also take into mind that I'm in pro per and that liberal construction should be awarded my complaint. . . I was filing a civil suit because nobody in the prosecutor's office would help me file a criminal suit. . . I did file my affidavit of indigency. I was a bona fide indigent and was on welfare. I was picking up garbage and weeds from the grass at the county building, here, for years. There was no way to get a transcript before I did. And I told the proper authorities timely and so I did what I was supposed to do." 4/21/86 Trial Court Hearing Before Judge Kobza.

6/20/86 In A "Non-Evidentiary" Hearing, County Judge Kozba (1) Ordered That Don's No. 73-C7432-CK Contract Action And Independent Action No. 86-21207-CZ Seeking "Fraud Upon Court" Evidentiary Hearing Be Consolidated; (2) Denied Don's Request For Disqualification Of Respondent CULVER And O'TOOLE Law Firm Partnerships From Dual Representation Of Nightclub Sellers And Joint Venture Deft 3 Johnsons Disguised-As-Moneylenders Buyers:

"THE COURT: You do not have a right to pick your opponents' counsel." County Judge Kobza's 6/20/86 Hearing.

"STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
DONALD EDGAR JOHNSON,
Plaintiff,
v. File No. 86-21207-CZ
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.;
and ESTATE OF CARL A.
JOHNSON, SR., Jointly and Severally,
Defendants.
DONALD EDGAR JOHNSON, In Pro Per
FRED C. CULVER, JR. (P-12381)
Attorney for Defendants Richard Gordon Johnson and Carl Alfred Johnson, Jr.
Culver, Lague & McNally
500 Terrace Plaza
Muskegon, Michigan 49443
Telephone: 616/725-8148
THOMAS J. O'TOOL (P-18558)
Attorney for Defendant Estate of Carl A. Johnson, Sr.

JUDGMENT ORDER

At a session of said court held in the County Building, Muskegon, Michigan, on the 20th day of June, 1986.

PRESENT: HON. MICHAEL E. KOBZA, Circuit Judge.

"Defendants having filed their motion for summary disposition of all of plaintiff's claims for failure to state any claim upon which relief can be granted pursuant to MCR 2.116(C)(8), and the Court having fully considered plaintiff's arguments in reply, and oral arguments having been heard in open court on April 21, 1986, and

The Court having initiated its own dispositive motion and order on or about May 7, 1986,

IT IS ORDERED that Muskegon County Circuit Court Action 73-C-7432-CK be consolidated with the instant case 86-21207-CZ, and

IT IS FURTHER ORDERED, in accordance with this Court's findings on the record, together with this Court's Opinion and Order of May 7, 1986, that plaintiff's claims be dismissed with full prejudice, but without costs, and

plaintiff's emergency motion and objection to the entry of this judgment order are denied, and

IT IS FURTHER ORDERED that plaintiff not submit any further documents or pleadings to be filed in Muskegon Circuit Court in these consolidated matters.

s/HON. MICHAEL E. KOBZA, Circuit Judge"

(On CULVER LAGUE & McNALLY stationery).

6/30/86

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Entered 6/30/86

DONALD EDGAR JOHNSON,
Plaintiff-Appellant, SC: 78441
v. COA: 88008
MICHAEL E. KOBZA; CARL ALFRED JOHNSON;
RICHARD GORDON JOHNSON;
CARL ALFRED JOHNSON, JR.;
LANDMAN, LATIMER, CLINK & ROBB; and WILLIAM F. McNALLY, et al, Defendants-Appellees.

"On order of the Court, the delayed application in propria persona for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

10/22/86

"At A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN No.92822

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. Entered 10/22/86
RICHARD GORDON JOHNSON,
CARL ALFREDJOHNSON, JR.,
and the Estte of CARL A. JOHNSON, SR.,
Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

In this cause, plaintiff-appellant has filed a motion to compel the trial court to re-accept trial exhibits, and no answer thereto having been filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion be, and the same is hereby DENIED."

3/3/88 Respondent Danhof's State Court Of Appeals, Without Reviewing Plaintiff's Evidence Affirmed, Judge Kobza's Granting Deft Culver And Deft O'Toole Law Firm Partnerships' Motions For Summary Disposition Of Consolidated Cases Nos. 73-C7432-CK And 86-21207-CZ, LIED That Plaintiff Failed To Cite Any Authority In Support Of His Request For An Order Directing County Trial Court To Deliver 1974 Trial Exhibits To Court Of Appeals:

"COURT OF APPEALS - STATE OF MICHIGAN

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. 92822 FILED MAR 3 1988

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and The ESTATE OF CARL A. JOHNSO, SR., jointly and severally, Defendants-Appellees.

L.C. 73 C7432CK + 86 21207CZ

"PER CURIAM: Plaintiff-appeals as of right from a June 20, 1986 order granting defendants' motion for summary disposition pursuant to MCR 116(C)(8) and dismissing plaintiff's complaint. Initially we note that although defendants brought their motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief may be granted, a review of the trial judge's decision reveals that he looked beyond the pleadings in deciding defendants' motion. Therefore, we will construe the order granting summary disposition as one granted pursuant to MCR 2.116(C)(10), no genuine issue of material fact. Huff v Ford Motor Co. 127 Mich App 287, 338 NW2d 387 (1983).

A motion for summary disposition premised upon MCR 2.116(C)(10), no genuine issue as to any material fact, requires the trial court to review he entire record to determine whether the nonmoving party has discovered facts to support the claim or defense. In reviewing the evidentiary record, the trial court must give the benefit of any reasonable doubt to the nonmoving party. Before judgment may be granted, the court must be satisfied that it is impossible for the claim asserted to be supported by the evidence at trial. Huff. supra.

A review of the record in the instant case convinces us that the trial court properly granted defendants' motion for summary disposition. Plaintiff's alleged 'independent action' alleging fraud on the court was nothing more than a laundry list of findings of fact made at the conclusion of a 1974 trial on plaintiff's original complaint against defendants. These findings were made at the conclusion of the 1974 trial and at the conclusion of the numerous subsequent post-judment motion hearings. The trial court has had several opportunities to review plaintiff's claims in one form or another over the 14 years this plaintiff has kept the instant actions alive. Every decision made by the trial court has been appealed to this Court. Some of these decisions were appealed to the U.S. Supreme Court. We believe the trial judge correctly determined that this claim 'has been litigated to death.' Summary disposition was proper.

Plaintiff also seeks an order directing the lower court to deliver to this Court the 1974 trial exhibits. However, plaintiff's failure to cite any authority in support of his request precludes appellate review of the same. Tringali v. Lal, 164 Mich App 299; 416 NW2d 117 (1987). Moreover, because summary disposition was proper, this issue has become moot.

Affirmed."

2/2/89

"MICHIGAN SUPREME COURT

DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR., Defendant-Appellees,

SC 83419
COA: 92822
LC: 86-59607-SE

On order of the Court, the delayed application for leave to appeal is considered and it is DENIED, because we are not persuaaed that the questions presented should be reviewed by this Court..."

3/29/89

"MICHIGAN SUPREME COURT
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR., Defendant-Appellees,
SC 83419
COA: 92822
LC: 86-59607-SE

On order of the Court, the motion for reconsideration of this Court's order of February 2, 1989 is considered, and it is DENIED, because it does not appear that the order was entered erroneously..."

4/14/89

"MICHIGAN SUPREME COURT * * *
DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v.
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR.,
Defendant-Appellees,
SC 83419
COA: 92822

On order of the Court, the orders of February 2, 1989 and March 29, 1989 are hereby amended to correct a clerical error by correcting the notation of the lower court docket number to read as follows: 'LC: 86-021207-CZ'..."

7/31/89 Michigan Supreme Court Refused To Stay "Danhoff" Infirm Decisions Regarding Consolidated 73 C7432 CK And 86-21207 CZ:

MICHIGAN SUPREME COURT - Order Entered 7/31/89
DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
SC: 83419
COA: 92822
v.
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR.,
L.C. 86-21207-CZ
Defendants-Appellees.

"On order of the Court, the motion for stay of this Court's order of March 29, 1989 is considered, and it is DENIED."

9/3/89

"Court of Appeals, State of Michigan

In the Matter of Estate of Carl A. Johnson, Sr.
Docket # 108452
L.C.# 73-C7432 CK; 86-21207 CZ

Robert J.Danhof, C.J.
Presiding Judge
Myron H. Wahls
Richard Allen Griffin
Judges

The Court orders that the motion for rehearing is DENIED.

s/Robert J. Danhof..."

10/13/89

"Court of Appeals, State of Michigan

In the Matter of Estate of Carl A. Johnson, Sr.
Docket # 108452
L.C.# 86-59607-SE

Robert J. Danhof, C.J.
Presiding Judge
Myron H. Wahls
Richard Allen Griffin
Judges

The motion to correct the order of September 8, 1989 is GRANTED, and the lower court number on that order is corrected to 86-59607-SE. In other respects, the motion is denied.

s/Robert J. Danhof..."

11/29/89

SUPREME COURT OF MICHIGAN - Order 11/29/89

In re Estate of CARL A. JOHNSON, SR., Deceased

DONALD EDGAR JOHNSON,
Claimant-Appellant,
v.
FMB LUMBERMAN'S BANK, Personal Representative of the Estate of Carl A. Johnson, Sr., Deceased, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., RANDY VAN JOHNSON, and DARLYNN JO JOHNSON,
Petitioners-Appellees.

SC: 87252
COA:108452
L.C. 86-59607-SE

"On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

5/10/90 & 6/16/98 DON FILED HIS 4TH AMENDED COMPLAINT AND IN HIS 6/16/98 PETITION FOR CERTIORARI TO THIS SUPREME COURT NO. 97-2043, INCLUDED PORTIONS OF IT IN TWO COPIES PROVIDED DISTRICT COURT 1:90CV175 BY 10/6/98:

"On 5/10/90, Don filed his 4th Amended Class Action 9-defendants Complaint:

UNITED STATES DISTRICT COURT * * *

DONALD EDGAR JOHNSON AND CLASS OF ALLEGED WHITE COLLAR CRIME VICTIMS,

Plaintiffs, HON BENJAMIN F. GIBSON

VS File No. 1:90-CV-175

RICHARD GORDON JOHNSON, CARL ALFRED JOHSON, JR., THE CARL A. JOHNSON, SR. ESTATE, THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB, CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND P.C., AND THE STATE OF MICHIGAN AND/OR ITS COURT OF APPEALS' CHIEF JUDGE ROBERT DANHOF, Jointly And Severally, Defendants.

EMERGENCY PLAINTIFFS' PROPOSED 4TH AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES FOR TAKING 1922-1973-ACQUIRED PRIVATE PROPERTIES AND LIBERTIES FOR PRIVATE AND PUBLIC USE WITHOUT COMPENSATION OR 1973-1989 BASIC FUNDAMENTAL CONSTITUTIONAL ENTITLEMENTS IN STATE COURTS

JURY TRIAL DEMANDED. * * *

The Plaintiffs, Donald Edgar Johnson in pro per and a class of alleged white collar crime victims, say:

1. That plaintiff in pro per Donald Edgar Johnson is a 5½-years college-trained honorably discharged 5 years world war II veteran, 49 years member of American

n2 (cont'd) look-alike signature of the Muskegon Heights' Donald E. Johnson who died in 1996 after becoming Muskegon's Mayor while deft O'Toole became Muskegon's attorney. Don was not positive that 1956 son was not really "his" until his 1996 request for Don's Will.

Federation of Musicians, recording artist, composer, phono records corporation

ex-president, ex-nightclub owner-operator-entertainer, citizen of the United States, and resident of the State of Michigan with his post office address of PO Box 5407, Muskegon, Michigan 49445. That the 3 Johnson defendants are father and younger brothers of plaintiff and owners of several machine, tool, mold, and manufacturing shops/Michigan corporations. Defendant Carl-Sr became deceased in January, 1986. Defendant Carl-Jr is an accomplished pianist. Defendant Richard was subsequently on the board of directors of the Hackley bank that 2/9/65 issued the significant "moneylenders" disguise/frauds upon the courts, the United States, and plaintiff. * * *

2. That plaintiff is suing in behalf of himself and members of a class of alleged white collar crime victims discriminated against where state prosecutors declined to prosecute and state courts declined to provide non-prejudicial due process, equal/parental protection of the laws, and just compensation against undue local influence and continuing frauds upon the courts.

3. That this action raises the following question:

'WHERE DEFENDANTS ARE ALLEGED TO HAVE CONSPIRED TO DISGUISE THE FATHER AND 2 BROTHERS DEFENDANTS AS SHORT TERM MONEY LENDERS OR MONEY GIVERS FOR WRONGFULLY TAKING SUBSTANTIAL PRIVATE PROPERTIES/ LIBERTIES FOR PRIVATE AND PUBLIC USE WITHOUT COMPENSATION -- WHETHER THE STATE OF MICHIGAN'S COUNTY TRIAL COURT'S 1974 DISMISSAL WAS PROCURED AND 15 YEARS PROLONGED BY CONTINUING FRAUDS UPON THE STATE COURTS WHERE ITS COURT OF APPEALS CHIEF JUDGE COMMITTED NON-JUDICIAL AND JUDICIAL CONTINUING CONSTITUTIONAL TORTS INCLUDING DEPRIVATION OF BASIC FUNDMENTAL ENTITLEMENTS OF DUE PROCESS OF A TIMELY EVIDENTIARY HEARING TO DETERMINE IF FRAUDS EXISTED AND AN APPEAL OF RIGHT ON THE COMPETE WITH EVIDENCE RECORD OF A '3 YEARS

RELIEF FROM JUDGMENT' ACTION FOR PLAINTIFF, A MEMBER OF A CLASS OF ALLEGED WHITE COLLAR CRIME VICTIMS?'

4. That this 8/20/64-11/29/89 matter involves * * * Muskegon County Circuit Court #73-C7432 plus #86-21207, Muskegon Probate Court #86-59607,and Michigan Court of Appeals 22496, 59895, 50565, 78170, 88008, 92822, and 108452. (All application for leave to appeal to Michigan Supreme Court were declined 'because we are not persuaded that the questions presented should be reviewed by this Court'.

5. The plaintiff has filed the following copies of previous proceedings which are genuine: (a) white 1989 Petition to U.S. Supreme Court, (b) Tan 1989 Petition to U.S. Supreme Court, and (c) '462' photocopies. (Lower right corner page numbers of '462' documents are used herein.) * * *

7. No judge other than the 1974 trial judge John H. Piercey (now deceased) has seen the complete-with evidence trial court record and the original plaintiff's preponderance plus defendants' ONE exhibit * * *

8. Plaintiff's 1974 trial was on the 5th Amended Complaint, copy attached.

9. Plaintiff filed a timely 1986 claim against the defendant Carl A. Johnson, Sr. estate, copy attached.

10. THAT BETWEEN 8/20/64 AND 4/25/88, THE 3 JOHNSONS AND 4 LAW FIRMS DEFENDANTS AND/OR THEIR AGENTS CONSPIRED AND COMMITTED SIGNIFICANT CONTINUING FRAUDS UPON THE COURTS, THE PLAINTIFF, AND THE UNITED STATES -- PROVEN BY PLAINTIFF'S PREPONDERANCE OF EVIDENCE ENTERED, THEN ORDERED REMOVED, FROM SAID COUNTY CIRCUIT COURT #73-C7432 RECORD. 2/9/65 FRAUD, * * * 3/8/65 FRAUD, * * * 4/6/65 FRAUD, * * * 4/15/65 FRAUD, * * * 4/16/65 FRAUD, * * * 11/22/66 FRAUD, * * * 10/18/67 FRAUD, * * * 4/6-4/9/70 FRAUD, * * * 5/20/70 FRAUDS, * * * 5/20-6/20/70 FRAUDS, * * * 7/27/70-1974 Trial FRAUD, * * * 3/7/71 FRAUD, * * * 4/27/73-5/2/83 FRAUDS, * * * 5/6/83

FRAUD UPON THE COURT, * * * 2/10/86-6/20/86
FRAUDS UPON THE COURTS, * * * 12/30/86-4/25/88
FRAUDS UPON THE COURT * * *

12. The JURISDICTION OF THIS FEDERAL District Court is invoked under 28 USC § 1331 and FRCP 8(a)(1) in that this 1964-89 matter arises under the **Constitution** and laws of the United States.

13. The jurisdicition of this honorable court is further invoked under 42 USCS § 1985(2)(3) * * *

14. The 3 Johnsons defendants were on a 1964-1979 nightclub operating-purchase/phono records producing/selling joint venture to fairly incorporate and they deliberately conspired with the defendant law firms to **go down the highway disguised as moneylenders** to plaintiff while exhausting plaintiff's total assets/services for $5\frac{1}{2}$ years, repeatedly refused to fairly incorporate, and took plaintiff's total private properties/liberties for private and public use under false pretenses with no compensation -- in violation of the federal laws and **constitution.**

15. The 4 defendant law firms conspired with the 3 Johnsons defendants and 1965-1988 committed continuing frauds upon the plaintiff, the courts, and the United States while interfering with plaintiff's civil rights in violation of the federal laws and constitution.

16. The State of Michigan and/or its officer/agents, including its court of appeals chief judge Danhof, conspired with the 3 Johnsons defendants and the 4 law firms to perpetuate said continuing frauds upon the courts, the plaintiff, and the United States and interference with plaintiff's civil rights by depriving plaintiff of his **basic fundamental constitutional entitlements of due process, equal/parental protection of the laws, and just compensation** for private properties/ liberties taken for public use under color of state law and in violation of the federal laws and **Constitution Amendments 1,5,14.** Chief Judge Danhof committed both non-judicial and judicial torts in the continuous 1964-1989

chain of torts herein.

17. The U.S. District Attorney, by his silence, has declined to prosecute this sensitive matter.

18. Plaintiff and the class he represents have no plain, adequate, or complete remedy to redress the wrongs alleged and this suit is the only available means of securing relief and long-overdue **constitutional entitlements**. Plaintiff and the class he represents have been suffering, are now suffering, and will continue to suffer irreparable personal and property injury if no relief is granted against the defendants' unlawful acts and practices as set forth herein.

AFFIDAVIT * * *

9. That defendants Richard Gordon Johnson, his realtor Anthony J. Mark, and his Landman/Culver attorney William F. McNally purjured themselves during state courts proceedings;

10. That the above allegations of continuing **constitutional torts** and interfence with civil rights are with true facts;

11. That plaintiff never took full custody of the 3 Johnsons defendants' 9/64-7/70 contributions and their moneylender pretense/ disguise was false as was trial judge Piercey's ruling that the 3 Johnson defendants were money givers to plaintiff rather than moneylenders or joint venturers.

12. That the 3 Johnsons' 2/9/65-7/27/70 false money lenders pretense continued to operate up to the moment of their wrongful appropriation of the monumental partnership assets contibuted by the plaintiff re People v. Jones, 224 P2d 353,357 (1950).

13. That plaintiff has yet to learn exactly who took legal title to plaintiff's $40,000-$1,000,000-valued Kandy Tapes & Records Corp. assets contributed to said venture; and

14. That **plaintiff has never been compensated for any part of the venture** as described on the attached 5th Amended Complaint. * * *

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON
Plaintiff,
vs Circuit Court File C-7432
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, and CARL ALFRED JOHNSON, JR., jointly and severally,
Defendants.

FIFTH AMENDED COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACTS, CONVERSION OF REAL ESTATE PROPERTIES AND POSSESSIONS, LIBEL AND SLANDER

* * * WHEREFORE, the Plaintiff claims damages under Counts I, II, III hereof in the sum of * * * $2,026,046.00.'

Judge Gibson (1) entered his frauds- begotten 12/19/90 Judgment granting defendants' motions for undeserved 11th Amendment immunity and undeserved res judicata summary disposition of nonlawyer Don's federal question- conspiracy to interfere with civil rights class action complaint, (2) issued frauds upon the courts in attempts to dismiss the entire action, (3) refused to 28 USC § 455 disqualify himself in 1994 despite Don's 28 USC § 144 affidavit, and (4) secretly- from-Don transmitted the 1990-95 record (including said affidavit and much of Don's original evidence filed in the 1974 partial Muskegon County trial) to Chicago archives rather than allow it to be transmitted to court of appeals' case No. 96-1829.

Said Court of appeals case No. 96-1829 affirmed District Judge Gibson's denial of relief and denied rehearing en banc before Don learned that the 1990-95 record had been sent to the archives rather than to the court of appeals.

The United States Congress has authorized 3-judge district courts for ensuring vindication of federal constitutional rights where state forums are inadequate. 28 U.S.C. §§ 2283 & 2284. Hernandez v. Finley, Infra.

And it has authorized disqualification of inadequate not impartial district judges. 28 USC § 144.

And a civil rights action brought under 42 USCS § 1983, authorizing suit in equity to redress deprivation under color of state law, of federal constitutional rights, is an express statuary exception to 28 USCS § 2283. Trainor v. Hernandez, infra.

And Don contends that his civil rights action brought under 42 USC § 1985, authorizing suit for conspiracy to interfere with civil rights, should also be an express statuary exception to 28 USCS § 2283.[n3]

But Judge Gibson (1) erroneously stated that he was not biased and did not deny due process, (2) adopted the magistrate's 1997 Report and Recommendation to reject Don's "post-four fruitless appeals" pleadings for FRCVP 60(b)(6); 28 USC §§ 144, 2283, 2284 relief including an application for a 3-judge court, (3) refused to return the 1990-95 record

n3 The deft State And State Judge pleaded 11th Amendment immunity; deft Culver and O'Toole law firms - derivative law firms of Landman and O'Toole firms that perpetrated the confidence game -- represented dual conflicting interests; Culver firm filed deceptive Dossier of evidence with motions to dismiss; and the O'Toole firms (1) misrepresented that the Dossier contained "all" judgments, not excluding over 20 state judgments procured and prolonged by law firms' frauds & undue influence upon courts; and (2) LIED that they had nothing to do with perpetration/perpetuation of the 1964-to-date confidence game-threat of violence taking of Don's private properties.

-- including Don's preponderance of evidence -- to district court files, (4) refused Don's written motion to schedule a hearing to review his 1964-97 constitutional claims and determine if there should be a 3-judge court, (5) 8/13/97 scheduled a so-called "evidentiary" hearing to determine why Don should not be held in contempt of court for filing an application for a 'no magistrate-3 judge district court'[n4] directly to the District Court rather than to the magistrate,[n5] and (6) 9/30/97 adjourned

the contempt hearing temporarily pending outcome of Don's 8/25/97 appeal.

And the Court of Appeals for the 6th Circuit 2/10/98 refused 28 USC §§ 636(c)(4)(5), 1651, 2283, 2284 jurisdiction of the District Judge's denial of Don's request for FRCP 60(b)(6), 28 USC §§ 144, 2283, 2284 relief of a scheduled hearing to review Don's constitutional claims for a possible 3-judge court, because Don "has not been held in contempt nor have sanctions been imposed".[n6]

Rehearing was denied on 4/23/98, and Don's motion to stay the 5/8/98 mandate was denied on 5/8/98.

[n4]"In contempt proceeding for failure to comply with court order, contemnor has defense if it is factually impossible to comply with order." U.S. v. State of Tennessee (1995 WD Tenn) 925 F Supp 1292,1294.

[n5]Don's application for 3-judge court was rejected for filing both before and after he sought magistrate judge's leave to file.

[n6]Additionally, the Court of Appeals was where one of the perpetrator-perpetuators of state agents' continuing 1964-to-date chain of frauds upon the courts confidence game was then-Atty Albert J. Engel, Jr. n/k/a 6th Circuit Judge Albert J. Engel. He was an unqualified decisionmaker of an erroneous 12/23/92 Order

ARGUMENT OF REASONS FOR GRANTING THIS PETITION

I. A UNITED STATES COURT OF APPEALS HAS ENTERED A DECISION TANTAMOUNT TO APPROVING AN UNQUALIFIED DISTRICT JUDGE'S REFUSING TO STOP PLAINTIFF'S FORMER LAW FIRMS' DERIVATIVE FIRMS' DUAL REPRESENTATION OF NIGHTCLUB'S SELLERS AND FAMILY JOINT VENTURERS-DISGUISED-AS- MONEYLENDERS BUYERS, CONDONING STATE'S IMMUNITY FROM JUST COMPENSATION OBLIGATION, ATTEMPTING TO DISMISS ACTION BY FRAUDS UPON COURTS, AND DENYING APPLICATION FOR A 3-JUDGE COURT FOR VINDICATION

OF FEDERAL CONSTITUTIONAL RIGHTS IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The United States court of appeals for the Sixth Circuit has entered a 2/10/98 decision approving an unqualified district judge's: (1) dismissing the complaint, then obstructing justice by covering up the 1990-95 record/evidence/ affidavit for judge's disqualification in attempt to dismiss the action; (2) denying a post-four interlocutory appeals' request for FRCVP 60(b)(6); 28 USC §§ 144, 2283, 2284 extraordinary inequitable circumstances relief; (3) denying a "swindled by state agents" nonlawyer public servicer and a class of past, present, and future similar victims' written request for a hearing to review constitutional claims for possible 3-judge court pursuant to Acts of Congress; (4) scheduling a contempt hearing instead; and (6) staying that contempt proceeding

n6 affirming Judge Gibson's decision. And the Court of Appeals (1) failed to docket Don's 4/29/98-mailed Objections, and (2) kept failing to refere to the Landman and Culver law firms as two separate law firms, inter alia. pending appeal to the court of appeals.

And in a way that conflicts with this long list of this Supreme Court's decisions:[n7]

n7 Bounds v. Smith, 52 LEd2d 71; Bros. Inc. v. W.E. Grace Mfg. Co. 15 LEd2d 852; Bullock v. U.S., 88 LEd2d 901; Chambers v. NASCO, INC., 88 LEd2d 901; Chicago B. & Q. R. Co. v. Chicago, 41 LEd2d 979; Crites, Inc. v. Prudential Ins. Co. of America, 88 LEd 1356; Great Coastal Express, Inc. v. Int' Brotherhood of Teamsters, 74 LEd2d 978; Haines V. Kerner, 30 LEd2d 552; Hazel-Atlas Glass Co. v. Hartford-Empire Co., 88 LEd2d 1250; Hensley v. Eckerhard, 76 LEd2d 40,43; Hernandez v. Finley, 59 LEd2d 765; Injunction of State Proceedings, 66 LEd2d 903; Jungersen v. Axel Bros., Inc., 99 LEd 1267; Kearns v. Fred Lavery Porsche Audi Co., 83 LEd2d 971; Koster v. Lumbermens Mutual Cas. Co., 91

LEd 1067,1068; Liljeberg v. Health Servicers Acquisition Corp., 100 LEd2d 855; Moffett v. Robbins, 80 LEd 1397; Re Murchison, 99 LEd 942; State Judgments-Federal Courts, 72 LEd2d 911,921; Trainor v. Hernandez, 59 LEd2d 765; Trotter v. Intern. Longshoremen's & Warehousemen's Union, 51 LEd2d 585; and Webb's Fabulous Pharmacies, Inc., et al v. Bukwith, 66 LEd2d 938,939.

II. AT THE ONSET OF PRO SE NONLAWYER PUBLIC SERVICER'S FEDERAL QUESTION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS CLASS ACTION PRETRIAL PROCEEDING, THE DISTRICT COURT SHOULD STOP STATE AGENT PERPETRATOR LAW FIRMS' DERIVATIVE FIRMS FROM DUAL REPRESENTATION OF PUBLIC NIGHTCLUB SELLERS AND NONLAWYER'S FAMILY JOINT VENTURERS-DISGUISED-AS-MONEYLENDERS BUYERS THAT ALLEGEDLY CONDONED PERPETRATION AND PERPETUATION OF THEIR CONTINUING CHAIN OF FRAUDS AND UNDUE INFLUENCE UPON COURTS IN THEIR "JOINT VENTURE BAIT AND SWITCH TO MONEYLENDER" CONFIDENCE GAME-THREAT OF VIOLENCE-TAKING OF TOTAL PRIVATE PROPERTIES PURSUANT TO STATE LAW FOR PUBLIC AND PRIVATE USE WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION." Pages 13-22 Of Don's 6/16/98 Emergency Petition For Certiorari To The Court Of Appeals For The Sixth Circuit Two Copies Of Which Were Timely Provided District Court No. 1:90cv175.

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APPENDIX E: OTHER MATERIAL

1955 Kandy Tapes & Records Corp. (Indiana) founded by President Donald Edgar Johnson and Hammond, Indiana music store owner, Hal Morris. Attorney was Hammond, Indiana's Saul Ruman.

1956 Amer.Fed.Musicians of U.S. & Canada affiliation agreement signed by AFM Pres. Herman Kenin and Kandy Tapes & Records Corp. Pres. Donald E. Johnson a/k/a Donald Edgar Johnson.

11/17/58 Don's "Johnson's Boogie Woogie" Copyrighted And Published On Don's Kandy Music Publishers (BMI) With Don's Muskegon Homestead Address 334 Waterview, N. Muskegon, Mich.

1960-61 Don's wife who had replaced "bought out" Hal Morris was Kandy corporate officer, deserted Don, her children, and Kandy businesses to live with a Bill Hoffman a/k/a Bill Leet of Milwaukee.

April, 1962 Don's wife who had been living with Bill Hoffman a/k/a/ Bill Leet since mid-1960 while married and collecting moneys from Don, filed a fraud upon courts divorce that Don deserted her. And Don's Pennsylvania lawyer and her lawyer recommended Don not waste time and money challenging the divorce because Don and his lawyer's new-found evidence could prevail if necessary.

1/6/65 **Contradicting His Statement At Magistrate Brenneman's 6/25/90 Hearing, State Agent Realtor A.J. Mark-Solicited Respondent THOMAS J. O'TOOLE'S Re-Draft Of Then-Attorney Albert J. Engel's Draft of Appendix To 12/22/64 Liquor Licenses Sales Agreement:**

"APPENDIX TO SALES AGREEMENT * * * January 6, 1965.

TO: Alex T Novak and Berneice E. Novak * * * Dear Mr. and Mrs. Novak: I accept the Sales Agreement dated December 22, 1964 which you have executed and tendered to me; Provided;, however, you are agreeable to the following changes. * * * it should be understood that final closing is contingent upon my ability to exercise the option which I now have to buy the property at 3521 Hoyt Street, Muskegon, Heights, Michigan * * * PROVIDED THAT THE PROVISIONS IN THAT PARAGRAPH REGARDING INSURANCE

ARE DELETED * * * I wish to have added to the Sales Agreement the following two (2) additional paragraphs: a) Subject always to the approval of the Michigan Liquor Control Commission, the benefits of the Sales Agreement may be assigned by purchaser to a corporation in which he and/or member of his immdiate family are holders of at least a majority of the voting stock: Provided that the corporation shall fully assume all the obligations of purchaser which are at such time still to be performed. b) It is understood that sellers in entering into this Agreement look solely to Donald E. Johnson for its performance and that any other persons who may be lending financial support are epressly understood not to be partners or engaged in an enterprise or joint adventure with 'Donald E. Johnson be reason thereof. * * * The purchase price, excluding the price paid for the inventory of alcoholic beverages, is Thirty Thousand ($30,000.00) Dollars, payhable as follows: a) Fifteen Thousand ($15,000.00) Dollars on the execution of this agreement, receipt of which is hereby acknowledged, the proceeds of which shall be held in excrow by Anthony J. Mark, of 2433 Lakeshore Drive, Muskegon, Michigan, until the closing of this transaction. b) The balance of Fifteen Thousand ($15,000.00) Dollars shall be paid to Seller by Purchaser in monthly installments of Two Hundred ($200.00) Dollars per month, or more, on the 1st day of each and every month following the closing of this transaction, plus interest at the rate of five (5%) per cent per annum, computed monthly on all unpaid balances, provided however, that the entire balance of principal and interest shall be due and payhable in not more than five (5) years from the date of closing this transaction. Sellers hereby agree to pay a real estate commission to ANTHONY J. MARK in the total amount of Three Thousand ($3,000,00) Dollars, which commission shall be paid upon a final closing of this transaction...
Initialed s/DEJ, s/ATN, s/BN * * * Very truly yours, s/Donald E. Johnson. PURCHASER; ACCEPTED:

s/Alex T. Novak, s/Bernice E. Novak."

1/13/65 Evidence That Deft O'Toole WAS And IS Involved In The 1964-To-Date Confidence Game:

"SUN AGENCY * * * PURCHASERS STATEMENT PURCHASER: Donald E. Johnson, a single man. PURCHASE OF "Push's Tap Room" - PURCHASE PRICE: $30,000.00 * * * ATTORNEY O'TOOLE - ORIGINAL OPTION COMPOSITION CHARGE .. $45.00 * * * Anthony J. Mark, Assoc. Broker - s/Donald E. Johnson".

2/9/65 Respondent LANDMAN LATIMER CLINK & ROBB Is A Derivative Of Perpetrator LANDMAN GRIMM BRADBURY & LAURIN Which Drafted Perpetration Of Deft Richard's Confidence Game While Representing The Hackley Union Nat'l Bank & Trust Co.: -- The 2/9/65 Unlawful Trust Agreement Between Joint Venturer Don, Joint Ventuere Richard, and Bona-fide Moneylender, Harry E. Gibson.

Signature Card to DONALD EDGAR JOHNSON OR RICHARD G. JOHNSON" 1/11/65 $20,000.00 Savings Account Which Was Not A So-Called Musikist Savings Account Owned Solely By Donald Edgar Johnson. 1/11/65 Hackley Bank Signature Card.

"...TRUST AGREEMENT made this 9th day of February, 1965, between Donald E. Johnson, herein called SETTLOR, and Harry E. Gibson and Richard G. Johnson, herein called TRUSTEES * * * To assist in the financing of his said venture, Settlor has borrowed certain monies from Harry E. Gibson, Carl A. Johnson, Sr., Carl A. Johnson, Jr., and Richard G. Johnson, herein called CREDITORS * * * To secure the Creditors above named pending his acquiring the land contract interest above referred to, Settlor has concurrent herewith transferred the ownership of $14,000.00 of the savings now held by Settlor in a savings account in the name of MUSIKIST ..." 2/9/65 Unlawful Trust Agreement Drafted By Confidence Game State Agent Respondent LANDMAN FIRM

Perpetrator(s).

"1/11/65 HUNB (Savings A) -$20,000 * * *
3/18-3/22/65 Savings A +$5,250, Savings B +$14.000." Musikist Nightclub Ledger Sheets Showing Return Of Monies To Checking Account In Time For 3/18/65 Beginning Of Land Contract In Don's Name "Temporarily" Until Incorporation.

4/15/65 The Confidence Game Documents: (1) Which Were Locked From Don 1965-74, (2) Which Respondent O'TOOLE Law Firm Refused To Produce For Don's Defense Against Respondent LANDMAN Firm's Respondent Richard's 5/20/70 Foreclosure, and (3) Which Magistrate Brenneman Refused To Acknowledge Were In Respondent O'TOOLE Firm's Atty William Hipkiss's Handwriting At The 6/25/90 Hearing:

"ATTY HIPKISS TO DEJ-5/16/74 11 A.M.:

1. Unsigned copy of Bill of Sale
2. Machine copy of signed Sales Agreement
3. Unsigned copy of Amendment to Sales Agreement
4. Machine copies of Sun Agency letter to Donald Zemke
   A. April 5, 1965
   B. March 8, 1965
5. Carbon copies of purchasers statement
   A. Biermacher, Clark, Scalici & Christensen
   B. Novak
6. Copy of purchase agreement * * *
7. Original Title Opinion-4/6/65
8. Copy of letter Amendment to Sales Agreement;;
9. Copy of St. Paul Insurance Policy
10. Affidavit of V.S. Lauren re Tax Liens
11. Two Liquor Control Commission letters
12. 4 Money Lender Statements (copies)
13. MLCC "Warning". Check List and Assignment of interest in Licence.
14. Copy of Novak Identification Card.
15. Original Trust Agreement 2/9/65
16. Copy of Power of Attorney
17. Copy of Land Contract
18. Mortgage (copy) 4/15/65
19. Copy of letter to Sun Agency AJE 12/30/64

The above documents were gicven to me by

Attorney Wm. J. Hipkiss on May 16, 1974.
s/Donald E. Johnson"

4/15/65 The Following Were Present At That 4/15/65 Confidence Game "Send Off" Meeting When Don Signed All Of Those Documents Locked Away From Don In Respondent O'TOOLE Partnership's Office Until May, 1974:
State Agent Then-Atty Albert J. Engel,Jr. n/k/a 6th Cir. Judge Albert J. Engel; Bonafide Moneylender Harry E. Gibson; State Agent Realtor Anthony J. Mark; Joint Venturer Respondent Three Johnsons; and Joint Venturer Petitioner Donald Edgar Johnson.

12/31/65 For Don's 8/65 $150, Engel-Recommended Larnard Law Firm Transferred Don's Kandy Tapes & Records Corp. Indiana To Michigan For 12/31/65-10/18/67 Minimum Time Span

11/22/66 Engel-Recommended Larnard And Larnard Firm's And Respondent Richard's Atty Charles A. Larnard, Jr. Instructed Johnson Family To Hold Off Incorporating The Nightclub Until Better Nightclub Profit.

1/1/67 Petitioner Don's And Respondent Three Johnsons' Atty Albert J. Engel, Jr. Became A Muskegon Circuit Judge.

10/18/67 Respondent Carl-Jr Resigned As Officer To Don's Kandy Tapes & Records Corp. (Mich) Rather Than Sign His Name To Correct Respondent State Of Michigan's Erroneously Listing It As Kandy Tapes And Records Corp.(Mich).

3/1/69 Respondent Richard's 1964 Corporation Atty Charles A. LARNARD, Jr. became a Muskegon Circuit Judge.

7/1/69 Respondent Richard's Post-3/1/69 Atty Fred C. Culver, Jr. Joined The Respondent LANDMAN Firm Which Was Derivative Of Perpetrator LANDMAN GRIM BRADBURY & LAURIN Which Had Disguised Joint Venturer Richard Buyer As A Moneylender To Don While Representing Nightclub Land Sellers. And Respondent Atty Culver Mistakenly Failed To Withdraw From This Matter.

> "Propriety of attorney's conduct in dual respresentation is measured not so much against similarities in litigation, as against duty of individual loyalty which attorney owes to each of his clients ABA Code of Prof. Res. DR 5-105(B)." Picker Intern. Inc. v. Varian Associates, Inc. [(1989 C.A.Fed.(Ohio)] 869 F2d 578.

1969 Don's California-Stored Mobile Home/Office And The Muskegon County Nightclub Were Burglarized Of Substantial Kandy Documents And Indiana Corporate Seal.

4/6/70 Respondent Carl-Sr Signed Perpetrator/Perpetuator Respondent LANDMAN Firm-Drafted Proposal To Incorporate The Nightclub Which Don Rejected As A Sham.

5/20/70 Respondent Perpetrator/ Perpetuator LANDMAN'S Respondent Atty Fred C. Culver, Jr's Client, Respondent Richard G. Johnson, Foreclosed Upon Don Under False Pretense That The Respondent 3 Johnsons Joint Venturers With Don Were Moneylenders To Don In Violation Of 42 USC § 1985(2)(3).

7/27/70 When Don Verbally Turned Over His Equity In The Joint Venture To His Father Respondent Carl-Sr Johnson Because Of The 5/20/70 Forecloser-6/26/70 "Secret" Default Judgment, Don Was Unaware That

Default Judgment, Don Was Unaware That Carl-Sr Had Secretly Bought Out Moneylender Harry E. Gibson's Interest Regarding 12/15/64, 2/9/65, and 4/15/65 Documents. This Was A Ground For Don's 1986 Claim Against Respondent Carl-Sr's Estate.

7/29-12/4/70 Unaware That Respondent Carl-Sr Was Secretly Breaching Fiduciary Duties, Don Provided Him With Power Of Attorneys #2 and #3 For Winding Down The Joint Venture While Don Might Be On Public Welfare Schooling His Chidren-Mitigating Mobile Home/Office Damages in California.

12/70 Don Learned In California That Respondent Carl-Sr Had Turned All Of Don's Equity In The Joint Venture Over To Respondent Richard.

1/4/74 Petitioner Don fired Gillard & Gillard law firm about this date for aiding and abetting the theft of Don's Kandy Tapes & Records Corp. booklet/labor agreement with Amer.Fed. Musicians; but Respondent CULVER firm in 1990 represented to the District Court that the following phony 8/6/73 order was a true fact within its "80 Orders-7 Courts" dossier of evidence:

"STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
DONALD EDGAR JOHNSON, File No. C-7432
Plaintiff ORDER FOR
vs. WITHDRAWAL OF COUNSEL
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON and
CARL ALFRED JOHNSON, JR.,
Defendants.

At a session of said Court, held at the County Building, in the City of Muskegon, in said Court, on the 6th day of August, A.D., 1973,

PRESENT: Honorable CHARLES A. LARNARD, Circuit Judge.

This cause having been brought on to be heard, and the Court being fully advised in the premises;

It is hereby ORDERED that Gillard & Gillard, Attorneys for Plaintiff, be withdrawn from the above entitled action.

s/John H. Piercey, Circuit Judge.

I hereby certify, etc."

10/3/74 Respondent 3 Johnsons' ONLY Exhibit Filed In The 1974 Partial Trial By Respondent LANDMAN Firm's Atty William F. McNally:

"October 3, 1974 . . . (Deficit) ($2,148.88

Note: The above does not include $13,437 owed Mr. and Mrs. C.A. Johnson, Sr. as of June 30, 1970 by Donald Johnson dba Musikist."

11/27/74 Petitioner Don's Testimony -- Before 12/9/74 Erroneous Ruling -- Of Proofs/Evidence That The 1964-70 Family Venture Was A JOINT VENTURE; Not A Moneylending Venture:

"1. Joint retaining venture's attorney Albert J. Engel, Jr

2. Joint payment-4/70 of venture's county real estate taxes.

3. Joint checking account.

4. Joint planning with and without jointly-appointed bookeeper/accountant Epplett.

5. Joint savings account.

6. Joint delay selling phono records assets.

7. Joint acceptance-1/5/65 of M.O. Champion's $5,000 loan to venture.

8. Joint ownership and sale of plaintiff's homesite for capitalizing the venture.

9. Joint saving/trust account via attorney Engel.

10. Joint extension of Promissory Notes' time limit.

11. Joint Trust Agreement.

12. Joint decision re remodeling contracting.

13. Joint decision re purchase of venture's

insurance.

14. Joint acceptance of venture's realtor's loan to venture.
15. Joint decision re venture's real estate title discrepencies.
16. Joint decisions re phono records assets liquidating.
17. Joint decision of C.P.A. checkup of venture.
18. Joint waiver of 3-year notes' peyment when due.
19. Joint decision re extra entertainment gambles.
20. Joint payment of Accountant and decision postponng incorporation.
21. Joint decision to waive $16,000 minimum promised starting capital for nearly 2 years.
22. Joint belief in plaintiff's then-current equity in future incorporation of venture.
23. Joint decision to delay real estate payments.
24. Joint decision re accepting M.O. Champion's loans.
25. Joint decision to default Reith-Riley lawsuit.
26. Joint decision to put plaintiff's children to work 7 days/nights weekly.
27. Joint decision to reduce to austerity budget.
28. Joint decisions to reject plaintiff's invitations to go back on road.
29. Joint decision re accepting E & L Hutchins' $1,000 loan.
30. Joint decisions re special financial statement preparation.
31. Joint decision not to incorporate.
32. Joint decision not to appraise via Nedeau.
33. Joint decision to withhold paying $185 to San Diego trailer park DeAnza by 6/24/70.
34. Joint decision to withhold guaranteeing big winner Sally Rand her $100 per night for return engagement.
35. Joint delay-7/15/70 of venture's real estate payment.
36. Joint delay-3/5/70 of venture's liquor

license payment.

37. Joint decision to lay up plaintiff's car rather than repair.
38. Joint decision to transfer nightclub portion of venture to defendants.
39. Joint payment of plaintiff's life insurance routine payhments.
40. Joint decision to repair plaintiff's auto by 1/1/71.
41. Joint decision to repair plaintiff's musical career tools 2/71.
42. Joint decision to repay E & L Hutchinson creditors nearly in full.
43. Joint decision re venture' nightclub IRS obligations.
44. Joint decision re plaintiff's trip seeking justice 11/71.
45. Joint decision to produce even brief accounting 12/1/71.
46. Joint decision to return plaintiff San Diego to Midwest.
47. Joint decision plaintiff to depart from gainful tgraveling career on 11/5/64; depart for San Diego 8/24/70." County Trial T 11/27/74, p 95; #91-1160 Mich Ct of Appeals Appendix, p 484; Plus U.S. Supreme Ct #95-934 Petition For Writ of Certiorari To 6th Cir. Ct. of Appeals And Rehearing, p3. (State exhibit numbers omitted).

5/20/83

"Said Order * * * Condones 3 Men And Their Agents' Taking Substantial Government Property Plus A Man's Total Worldwide Substantial Properties, Child Custodys, And Basic Constitutional Rights * * * Under False Pretenses". 5/20/83 Trial Court Motion To Rescind 5/10/83 Order Denying Evidentiary Hearing.

4/21/86:

"The Constitution says that when someone puts out, he is to get just compensation. If he puts it out to the public, he still supposed to be compensated justly. I entertained the public and what I put into it was taken away

from me, many thousands and tens of thousands of dollars worth of effort and I never received just compensation. The case was brought before (trial) Judge Piercey and he went along with the powerful opposition . . . So Judge Piercey dismissed. Now, I brought before Judge Kobza, that's you, the situation whereby this dismissal in 1974 was procured by fraud upon the courts and prolonged for 11 years. There were parts of the case in the Court of Appeals, but the Court of Appeals never received the record, the full record. So they never had a chance to examine the full picture of what was going on, and so I was never given an appeal of right nor was I given a delayed appeal (of right). When you denied me a new trial on the grounds of fraud upon the courts, I was still pursuing a delayed appeal of right in the upper courts. I wasn't through yet. And **the record to this date has never left the trial court for examination by any other court**. . . . The Michigan Supreme Court had not yet finished reviewing the matter at a time when you denied my motion. . . And then in '84, you denied my (filing my) independent action. . . This court abused its discretion . . . This court refused to file an independent action. It did not act on it. It refused to even allow it to be filed. So how could this court properly review if they didn't allow it to be filed? . . . So because of the federal and state laws allowing frauds upon the courts to be aired before upholding the dismissal, this court must allow a hearing of my 12 frauds upon the courts filed in May of '83, and this Court must also uphold the United States Constitution which says just compensation for services rendered whether to private or public, and this court must also take into mind that I'm in pro per and that liberal construction should be awarded my complaint. . . I was filing a civil suit because nobody in the prosecutor's office would help me file a criminal suit. . . I did file my affidavit of indigency. I was a bona fide indigent and was on welfare. I was picking up garbage and weeds from the

grass at the county building, here, for years. There was no way to get a transcript before I did. And I told the proper authorities timely and so I did what I was supposed to do." 4/21/86 Trial Court Hearing Before Judge Kobza.

7/9/93 The Court Of Appeals Panel Which Pretended To "Correct" Circuit Judge Engel's Intervention Refused To Correct Fact That Don DID File The Requisite Number Of Copies Of His Petition For Rehearing En Banc. See 3/10/93 Denial Of Rehearing En Banc:

"...The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied." 7/9/93 6th Cir. Court Of Appeals Re-Denial Of Rehearing.

10/11/94 Affidavit In Support Of Petitioner's Motion For 28 USC § 144 Disqualification Of Judge Gibson:

"AFFIDAVIT * * * Donald Edgar Johnson, first duly sworn and deposed, says:

1. He is plaintiff herein this nonclosed case.

2. This affidavit is made in good faith.

3. Judge Benjamin F. Gibson cut plaintiff off at the 12/5/90 dispositive hearing thereby preventing plaintiff from refering to his evidence filed long before that hearing and re-filed at the onset of that hearing.

4. A hearing before an unbiased and impartial decisionmaker is a basic requirement of due process.

5. The probability of actual bias on the part of decisionmaker Judge Gibson is too high to be constitutionally tolerable.

6. No person, including persons within a class of resulted indigent pro se nonlawyer victims of fiduciaries' longtime Confidence Game-abuse of Judicial Process conspiracies, shall be denied the equal protection of the laws.

7. Contrary to FRCVP 56, Judge Gibson 12/5-12/19/90 did not due process-equal protection adjudicate defendants' motion for res judicata summary disposition on plaintiffs' evidence.

8. Despite plaintiff's filing pertinent 1973-82 state trial evidence 1-judge reviewed then ordered removed in 1983, plus state judgments procured without due process, Judge Gibson joined state courts' 1974-89 denying plaintiff's due process-equal protection right of appellate review.

9. Contrary to federal doctrine of res judicata [Allen v McCurry (1980) 449 US 90,95, 66 LEd2d 308,313, 101 S Ct 411], Judger Gibson did not due process-equal protection 12/5-12/19/90 deny defendants' motion for res judicata summary disposition.

10. Contrary to U.S. Const. Amend. 1, Judge Gibson did not due processequal protectin provide reasonable access for plaintiff's 1/10/92 emergency (undocketed) motion for FRCVP 60(b) relief supported by a copy of plaintiff-appellant's 725-pages Joint Appendix that was ignored by Court of Appeals for the Sixth Circuit No. 91-1160 thanks to defendants-appellees' masquarading as defendants-appellants with supplementary joint appendix duplicating their 12/5-12/19/90 switched-for-plaintiff's' evidence in district court.

11. Contrary to Judge Gibson's 4/167/13/92 Orders rejecting plaintiff's emergency 1/10/92 motion and supplements for FRCVP 60(b) relief -- (and in agreement with Judge Gibson's 1/9/94-entered Order allowing further pleadings) -- no 12/18/90 "final" judgment has already been entered dismissing this action so that 'the case is not longer pending in this or any other federal court'.

12. Contrary to Judge Gibson's 4/167/17/92 Orders, Judgment in this action was not entered on December 18, 1990; rather, it was entered on December 19, 1990.

13. Nowhere in the Judge Gibson 12/19/90-entered opinion and judgment is there dismissal of the action; rather, there is dismissal of just the original thru 4th amended complaints. See Opinion and Judgment (docket nos. 102,103).

14. Contrary to Judge Gibson's 4/16-7/13/92 Orders, no 12/18/90 final judgment dismissed this action; rather, a 12/19/90 non-final judgment dismissed plaintiff's original thru 4th amended complaints.

15. Judge Gibson 1/11/92-9/27/94 refused to grant FRCVP 60(b)(5)(6) relief that would have set aside or vacated his 12/19/90 thru 9/27/94 judgment and orders procured by extrinsic frauds upon the courts and/or without due process-equal protection.

16. Judge Gibson 1992-94 refused plaintiff FRCVP 60(b)(6) relief plus FRCVP 15(a) leave to file an amended complaint comporting with his proponderance of evidence when justice so required.

17. Contrary to U.S. Const. Amends. 5 and 14 due process-equal protection clauses, Judge Gibson -- without providing due process-equal protection to plaintiff -- entered 1990-94 judgments and orders that are consistently blatantly partial to defendants.

18. Plaintiff complained to the U.S. Supreme Court Nos. 93-951 + 94-146 of Judge Gibson's 1990-94 judicial misconduct and urged his disqualification since 10/1/93 on heels of a fruitless interlocutory appeal to the U.S. Court of Appeals for the Sixth Circuit Nos. 91-1160 + 92-1829 that would have remedied the misconduct without disqualification.

19. Plaintiff mailed copies of his 10/1/93 and '7/22/94-pending' two U.S. SUpreme Court Petitions for Extraordinary Writ to Judge Gibson in care of the Clerk of this Court. See 10/1/93 Petition, pp 38,49; 7/22/j94 Petition, pp 8-10, herein the record of this case.

20. Despite plaintiff's urging, the U.S. Supreme Court declined to review this matter on the merits; i.e. on the record.

21. Relief from Judge Gibson's 12/18/90-filed thru 9/23/94-filed judgments pursuant to Rule 60(b)(6) should have been 3/11/92-9/27/94 granted in this case arising over dispute between litigants where Judge Gibson had violated 28 USCS § 455(a), which concerns disqualification of federal judges and Judge Gibson should have known of circumstances which disqualified him, for lack of impartiality, from 12/5/90-9/27/94 hearing this dispute.

And this case's 3/11/92-9/27/94 $2\frac{1}{2}$-years delay was attributable to Judge Gibson's inexcusable failure to disqualify himself.

Plaintiff believes that he is filing this affidavit at least ten (10) days prior to any district court judge's yet-unannounced hearing of plaintiff's appeal for FRCVP 59(e) relief from Judge Gibson's 9/27/94 Order affirming Magistrate Judge Hugh W. Brenneman, Jr.'s post-1/5/94 pertinent decisions favorable to defendants on ground of Judge Gibson's 3/11-7/13/92 erroneously denying access to plaintiff's 3/10/92 motion for FRCVP 60(b) relief from the 12/19/90 judgment, then repeatedly erroneously ruling that his 12/19/94 judgment dismissed the entire case rather than the complaints.

23. Plaintiff's actions:

#1: 4/73-11/89 (contract-motion for relief);

#2: 2/86-11/89 (independent for relief);

#3: 5/86-TO DATE (estate claim);

#4: 2/90-TO DATE (civil rights, copyright etc);

24. Justice requires that Judge Gibson disqualify himself, a different judge provide FRCVP 59(e) relief altering or amending Judge Gibson's 9/27/94 Memorandum Opinion & Order, and a FRCVP 60(b)(5)(6) evidentiary hearing be provided for resolving the following issues forthwith:

A. WHETHER PERTINENT 1974-TO-DATE STATE AND FEDERAL COURT JUDGMENTS OF PLAINTIFF'S ACTIONS #1 THRU #4 SHALL BE SET ASIDE OR VACATED BECAUSE THEY WERE PROCURED BY FRAUDS UPON THE COURTS AND/OR WITHOUT

DUE PROCESS-EQUAL PROTECTION. FRCVP 60(b)(5)(6); U.S. CONST. AMENDS. 1,5,14?

B. WHETHER THE DEFENDANT ESTATE'S ATTORNEY THOMAS J. O'TOOLE -- (NOT THEN-ATTORNEY ALBERT J. ENGEL) -- DRAFTED THE ALLEGED UNLAWFUL 1/6/65 APPENDIX TO 12/22/64 NIGHTCLUB SALES AGREEMENT AT THE HEART OF THIS 1964-94 DISPUTE?

C. WHETHER DEFENDANT LAW FIRMS ARE UNQUALIFIED TO REPRESENT ANY OF THE JOINT AND SEVERAL DEFENDANT THREE JOHNSONS?

D. WHETHER PLAINTIFF SHALL PROCEED ON HIS CAPTION-SUPPLEMENTED (TO EXCLUDE JUDGE ALBERT J. ENGEL) 1/24/94 CLASS ACTION 5TH AMENDED COMPLAINT SUPPORTED BY HIS 725 PAGES JOINT APPENDIX?

25. Plaintiff has yet to receive any compensation from defendants' severe continuing wrongdoing since 1964.

Further, affiant sayeth not.

s/DONALD EDGAR JOHNSON"

5/17/96 Respondent LANDMAN LATIMER CLINK & ROBB Partnerships's Rerpesentative Atty Steven C. Kohl LIED To Petitioner Don And Magistrate Brenneman That He Filed An Appearance On behalf Of LANDMAN LATIMER CLINK & ROBB, P.C., Withdrew From The Corporation In 1992 And His Prior Appearance "Terminated With The Termination Of The Underlying Proceedings":

"...I filed an appearance on behalf of one of the named defendants Landman, Latimer, Clink & Robb, **P.C.** * * * Judge Gibson dismissed this action and your subsequent appeal of Judge Gibson's dismissal to the United States Court of Appeals for the Sixth Circuit was also dismissed. I believe that I did file an appearance on behalf of Landman, Latimer, Clink & Robb in the United States Court of Appeals for the Sixth Circuit on your initial appellate

filing. As both the District Court action and the subsequent appeal have now terminated through final orders, it is my belief that any responsibility I may have had as counsel of record has also terminated. * * * s/Steven C. Kohl. cc: Magistrate Hugh W. Brenneman, Jr."

May, 1996: Don's so-called "son" Randy Van Johnson -- obviously conceived In Niles, Michigan By His Mother, Wanda Lee Johnson, and Don's Cousin, James McCormick, While Don Was Performing At Shula's Nightclub -- requested copy of Don's Will. And Don stopped contact with him ever since. (Don's so-called "daughter" Darlynn Jo Johnson/Montoya-etc -- who became "owned" by gang(s) and mothered white and black children, then "lost" them -- had already stopped providing her address or any contact with Don).

6/28/96: The Donald E. Johnson who allegedly signed Donald Edgar Johnson's pertinent documents for stealing Don's private properties DIED.

"...Mr. Johnson was also a member of the Muskegon City Commission, serving 3 terms as Mayor and was co-organizer of **Muskegon Federal Credit Union** * * * Johnson was elected to the commission in 1964 and spent 18 years there." 6/28/96 Muskegon Chronicle.

7/9/96: An Attempt Was Made On "Whistle-Blower" Don's life By A Gang Of Blacks Targeting Don's Remaining Private Properties In Interspace Unlimited LCC Storage Facility, 1657 S. Getty St., Muskegon.

8/4/97: Don Filed His Objections To The Magistrate's 8/1/97-Filed Report And Recommendation:

U.S. DISTRICT COURT- WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION File No. 1:90-CV-175
Hon. Benjamin F. Gibson
RELATED: Mich. SupremCt/ #97521
U.S. Supreme Ct. #94-146, #95-934
6th Cir Ct. Of Appeals #94-1826/1979
CLASS ACTION REQUESTED
Three-Judge Court Requested

DONALD EDGAR JOHNSON,
Plaintiff,

V.

PLAINTIFF'S EMERGENCY MOTION TO ALTER, AMEND, OR VACATE THE 7/31/97 REPORT AND RECOMMENDATION; AND, IN THE ALTERNATIVE, TO VACATE THE 12/19/90 JUDGMENT AND 1/5/94 ORDER

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., THE ESTATE OF CARL A. Johnson, SR., THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB. CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, P.C., THE STATE OF MICHIGAN, And ROBERT J. DANHOF, Michigan Court Of Appeals Chief Judge, Jointly And Severally,
Defendants.

NOW COMES Donald Edgar Johnson, 24-Years-Nonlawyer-In-Pro Per, who pursuant to FRCVP 59(e) moves the Court to alter, amend, or vacate the Magistrate Judge Brenneman 7/31/97 Report And Recommendation and, in the alternative, to vacate its 12/19/90 Judgment plus 1/5/94 Order.

A Brief in support is attached. * * *

QUESTION

I. WHETHER NONLAWYER'S POST-APPEALS RULE 60(b)(6) PETITION FOR 28 USC §§ 144,2283,2284 RELIEF **WITH CONSTITUTIONAL CLAIMS** -- THAT HIS SUBSTANTIAL PROPERTIES WERE TAKEN BY STATE'S AGENTS FOR PUBLIC USE WITHOUT COMPENSATION AND THAT HIS FEDERAL QUESTION-INTERFERING WITH CIVIL RIGHTS CLASS ACTION AMENDED COMPLAINT'S RES JUDICATA DISMISSAL WAS PROCURED AND PROLONGED BY FRAUDS UPON THE COURTS WITHOUT DUE PROCESS -- MUST BE FILED, REVIEWED FOR NONFRIVOLOUSNESS, PROVIDED A 3 JUDGE DISTRICT

COURT'S RULING, AND APPEALED TO SUPREME COURT -- RATHER THAN NOT BE FILED, REJECTED AS FRIVOLOUS, PROVIDED SAME ONE JUDGE DISTRICT COURT FOR DETERMINING IF NONLAWYER SHOULD BE HELD IN CONTEMPT FOR DISREGARDING ORDER TO OBTAIN LEAVE FROM SAME MAGISTRATE BEFORE ATTEMPTING TO FILE, AND APPEALED TO COURT OF APPEALS?

II. WHETHER THIS COURT SHOULD VACATE ITS 12/19/90 JUDGMENT AND 4/17/92 ORDER? * * * Allstate v. Michigan Carpenters' Coun. H. & W. Fund (1991 WD Mich) 760 F Supp 665,668 * * * Armour v. Ohio, (1991 CA6 Oh) 925 F2d 987 * * * Hernandez v. Finley (1979 ND Ill ED) 471 F Supp 516; affd 440 US 951, 59 LEd2d 765, 99 S Ct 1488 * * * Huguley v. General Motors Corp. (1994 CA6 Mich) 35 F3d 1052 * * * Injunction of State Proceedings, 66 LEd2d 903 * * * Mertik v Blalock (1993 CA6 Oh) 983 F2d 1353 * * * Overbee v. Van Waters & Rogers (1985 CA6 Oh) 765 F2d 578 * * * U.S. v.Twitty (1995 CA6 Mi) 44 F3d 410 * * * 28 USCA §§ 144,636, 1253,2283,2.284,2844; 42 USC §§ 1983,1985(2) (3); FRCVP 60(b)(6)..."

8/8/97: Don's Supplement To 8/4/97 Emergency Objections To Magistrate's Report & Recommendation Certified Facts With Copies Of 1964-65 Ledger Sheets And 3 1964-97 Constitutional Claims:

"...Constitutional Claim #1: Between 1964 and 1973, THE DEFENDANTS CONFIDENCE GAME-UNDER THREAT OF VIOLENCE TOOK Don's near-total private properties worth $40,000-$1,000,000 for their public/political/private use without compensation in violation of Amendments 5,14.

Constitutional Claim #2: Between 1973 and 1994, the defendants procured and prolonged Don's Breach of Contract-Conversion-Libel & Slander Plus Defendant Estate Claim dismissals by frauds upon the courts without due process-equal protection-just compensation

in violation of Amendments 1,5,14.

Plaintiff Don is a member of a class of nonlawyer public service provider victims of State agents' unconstitutional unlawful tortious conduct -- a class which is the object of invidious discriminations.

CONSTITUTIONAL CLAIM #3: Between 1990 and 1997, the defendants procured and prolonged Don's federal question-interfering with civil rights class action amended complaint's res judicata dismissal[n4] by frauds upon the courts[n5] without due process in violation of Amendments 1,5,14."

8/9/97: Don's 2nd Supplement To 8/4/97 Objections Detailing Reasons For Vacating The 12/19/90 Judgment Plus 1/5/94 Order On Ground Of Frauds Upon The Courts With Attached "Twenty-Two Court Orders Interfering With Civil Rights In State Courts & U.S. Supreme Court" Fraudulently Omitted From Defendants' 3/21/90 Dossier Of Judgments.

8/15/97 Emergency Motion To Alter Or Amend Court Judge's 8/13/97-Filed Order (Followed By 2 Supplements).

9/97-4/98: Don's Mouth Became Mysteriously Infected Requiring Expensive Root Canal Treatment On Heels Of Dentists' Malpractice. And His Personal Computerized Legal Files Became Unavailable By Malfunctioning "Obsolete" Word Processor Locally Labeled "Beyond Repair".

10/31/97: Respondents Wrote Court Of Appeals That They Would Not Be Participating In Appeals.

10/31-12/22/97: Petitioner Don Requested That His Joint Appendix Volumess I-VIII (Over 2,000 Pages) Be Adopted As Part Of Current Record In Court Of Appeals.

11/2/98 PETITIONERS' PETITION FOR WRIT OF MANDAMUS TO U.S. DISTRICT COURT:

"UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CASE NO. 98-2190

WD Mich SD #1:90-CV-175
RELATED: Mich. Supreme Ct. #97521
U.S. Supreme Ct. #85-357, #88-2116.
#94-146, #95-934, #97-2043
6th Cir Ct. Of Appeals #96-1826/1979,
#97-1944,1955,2062
CLASS ACTION
Three-Judge District Court Requested

In Re DONALD EDGAR JOHNSON, et al

PLAINTIFFS' EMERGENCY PETITION
FOR WRIT OF MANDAMUS DIRECTED TO
WD Mich SD U.S. DISTRICT COURT

In The WD Mich SD Case No. 1:90-CV-175

DONALD EDGAR JOHNSON AND CLASS OF NONLAWYER PUBLIC SERVICERS CONFIDENCE GAME-SWINDLED-TO-INDIGENCY BY BAD FAITH STATE AGENTS WHO KEEP INTERFERING WITH CIVIL/CONSTITUTIONAL RIGHTS OF REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, AND JUST COMPENSATION,

Plaintiffs-Petitioners

V.

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR, THE ESTATE OF CARL A. JOHNSON, SR., THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB, CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, P.C., THE STATE OF MICHIGAN, And ROBERT J. DANHOF, 1978-89 Michigan Court Of Appeals Chief Judge, Jointly And Severally,
Defendants-Respondents
PLUS
WD MICH SD U.S. DISTRICT COURT
Additional Respondent.

NOW COMES Plaintiffs-Petitioners Donald Edgar Johnson (Don), 25-Years- Nonlawyer-In-Pro Per -- and yet-to-be- certified class of similar nonlawyer public servicer victims -- who pursuant to FRAP 21 and 6th Cir R. 23 petition for a writ of mandamus directed to WD Mich SD U.S. District Judges Douglas W. Hillman and Benjamin F. Gibson.

STATEMENT OF FACTS

Plaintiffs-petitioners were swindled-to-ndigency by bad faith State of Michigan agents who keep interfering with civil/ constitutional rights of reasonable access, due process, equal protection, and just compensation.

The State of Michigan court procedures did not afford resulted indigent confidence game victim nonlawyer public servicers with an adequate forum for vindication of their federal constitutional rights.

Nor did the appropriate federal district court's magistrate-one judge procedures.

"The Fifth Amendment's command that private property shall not be taken for public use without just compensation is obligatory on the states." Webb's Fabulous Pharmacies, Inc., et al v. Bukwith (1980) 66 LEd2d 938,939.

"[C]onstitutional claim was not subject to being left to state courts under doctrine of abstention where * * * procedures contained therein did not afford plaintiffs an adequate forum for vindication of federal constitutional rights." Hernandez v. Finley (1979 ND Ill ED) 471 F Supp 516; affd 440 US 951, 59 LEd2d 765, 99 S Ct 1488.

§ 11. Civil rights laws * * *[T]he Supreme Court held or recognized that the Civil Rights Act of 1871 (42 USCS § 1983) falls within the exception to the prohibition, contained in 28 USCS § 2283, of federal court injunctions of state court proceedings. * * * [O]n remand * * * the court recognized that a civil rights action brought under 42 USCS § 1983 fell within an express statutory exception to 28 USCS

§ 2283, the court reversing a decision by a three-judge District Court in a civil rights class action on the ground that the District Court should have abstained, under principles of federalism and comity, from entertaining the action and should have dismissed the complaint." Injunction of State Proceedings 66 LEd2d 903. (Emphasis added).

STATEMENT OF ISSUES PRESENTED

I. WHETHER DISTRICT JUDGE DOUGLAS W. HILLMAN ISSUED A 10/13/98 DECISION (ENTERED ON 10/14/98) TANTAMOUNT TO APPROVING UNQUALIFIED DISTRICT JUDGE BENJAMIN F. GIBSON'S REFUSING TO STOP PLAINTIFF'S FORMER LAW FIRMS' DERIVATIVE FIRMS' DUAL REPRESENTATION OF NIGHTCLUB'S SELLERS AND FAMILY JOINT VENTURERS-DISGUISED-AS-MONEYLENDERS BUYERS, CONDONING STATE'S IMMUNITY FROM JUST COMPENSATION OBLIGATION, ATTEMPTING TO DISMISS ACTION BY FRAUDS UPON COURTS, AND DENYING APPLICATION FOR A 3-JUDGE COURT FOR VINDICATION OF FEDERAL CONSTITUTIONAL RIGHTS IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THE U.S. SUPREME COURT?

II. AT THE ONSET OF PRO SE NONLAWYER PUBLIC SERVICER'S FEDERAL QUESTION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS CLASS ACTION PRETRIAL PROCEEDING, WHETHER THE DISTRICT COURT SHOULD STOP STATE AGENT PERPETRATOR LAW FIRMS' DERIVATIVE FIRMS FROM DUAL REPRESENTATION OF PUBLIC NIGHTCLUB SELLERS AND NONLAWYER'S FAMILY JOINT VENTURERS DISGUISED-AS-MONEYLENDERS BUYERS THAT ALLEGEDLY CONDONED PERPETRATION AND PERPETUATION OF THEIR CONTINUING CHAIN OF FRAUDS AND UNDUE INFLUENCE UPON COURTS IN THEIR "JOINT VENTURE BAIT AND SWITCH TO MONEY LENDER" CONFIDENCE GAME-THREAT OF VIOLENCE TAKING OF TOTAL PRIVATE PROPERTIES PURSUANT TO STATE LAW FOR PUBLIC AND PRIVATE USE WITHOUT REASONABLE ACCESS, DUE PROCESS EQUAL PROTECTION, OR JUST COMPENSATION?

III. WHETHER THE STATE AND IT'S BAD FAITH AGENTS ARE NOT 11TH AMENDMENT IMMUNE FROM JUST COMPENSATION JOINT OBLIGATION AND ACCOUNTABILITY WHO SWINDLED NONLAWYER PUBLIC SERRVICER TO INDIGENCY, THEN IN INADEQUATE FORUMS KEPT INTERFERING WITH REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION AND JUST COMPENSATION FOR PRIVATE PROPERTIES/POWER OF ATTORNEYS TAKEN FOR PUBLIC USE PURSUANT TO STATE LAWS?

IV. WHETHER ALL NONLAWYER PUBLIC SERVICERS WOULD HAVE A COMMON INTEREST IN PREVENTING UNCONSTITUTIONAL CONFIDENCE GAME TAKING UNDER THREAT OF VIOLENCE OF SUBSTANTIAL PRIVATE PROPERTIES FOR PUBLIC USE WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION PLUS LONG-TIME UNLAWFUL CONSPIRING TO INTERFERE WITH CIVIL RIGHTS; AND FEDERAL QUESTION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS ACTION BROUGHT BY PRO SE NONLAWYER PUBLIC SERVICER WOULD BE MAINTAINABLE AS A CLASS ACTION AS TO QUESTION OF CONFIDENCE GAME-THREAT OF VIOLENCE-TAKING OF PRIVATE PROPERTIES FOR PUBLIC USE WITHOUT DUE PROCESS OR JUST COMPENSATION PLUS INTERFERING WITH CIVIL RIGHTS IMPOSED BY THE STATE'S BAD FAITH AGENTS WHO SWINDLE NONLAWYER PUBLIC SERVICERS TO INDIGENCTY, THEN DISCRIMINATE AGAINST THEM IN THE COURTS?

V. WHERE DISTRICT JUDGE GIBSON KNOWINGLY COMMITTED FRAUDS UPON COURTS ALONGSIDE DEFENDANTS FOR ATTEMPTED PROCURING AND PROLONGING OF A DISMISSAL OF THE ACTION, WHETHER GIBSON REPLACEMENT JUDGE HILLMAN SHOULD PROMPTLY RULE ON REQUESTS FOR DISCOVERIES, CLASS CERTIFICATION, DECLARATORY JUDGMENT, AND SUBSTANTIALITY OF NONLAWYER'S 1964-98 CONSTITUTIONAL CLAIMS FOR DETERMINING "MAGISTRATE-ONE JUDGE" OR "NO MAGISTRATE-THREE JUDGE" DISTRICT COURT INJUNCTIVE RELIEF; OR, IN THE ALTERNATIVE, IMMEDIATELY REQUEST THE CHIEF JUDGE OF THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT TO CONVENE A THREE-JUDGE COURT PER 28 USC §§ 2283,2284?

VI. AFTER RES JUDICATA PRETRIAL DISMISSAL OF THE 4TH AMENDED COMPLAINT WITHOUT DUE PROCESS-EQUAL PROTECTION, FOUR (OR SIX) FRUITLESS INTERLOCUTORY APPEALS INTERVENED BY UNQUALIFIED APPELLATE CIRCUIT JUDGE ALBERT J. ENGEL/1964-65 PERPETRATOR1992 PERPETUATOR, AND UNQUALIFIED DISTRICT JUDGE GIBSON CONDUCTED DE NOVO REVIEW OF OBJECTIONS THEN ENTERED JUDGMENT ADOPTING MAGISTRATE JUDGE HUGH W. BRENNEMAN, JR.'S REPORT AND RECOMMENDATION TO DENY RELIEF OF A FIRST-EVER FEDERAL HEARING FOR POSSIBLE 3-JUDGE COURT WITH OR WITHOUT JUDGE GIBSON FOR VINDICATION OF FEDERAL CONSTITUTIONAL CLAIMS RESULTED FROM "NO ADEQUATE STATE FORUM"; WHETHER JUDGE GIBSON'S REPLACEMENT JUDGE HILLMAN SHALL GRANT A COURT-SCHEDULED HEARING TO DETERMINE (1) THAT DEFENDANTS AND JUDGE GIBSON HAVE ISSUED FALSE STATEMENTS CONSTITUTING SIGNIFICANT FRAUDS UPON THE COURTS-OBSTRUCTION OF JUSTICE: (2) THAT PLAINTIFFS' CONSTITUTIONAL CLAIMS ARE NOT FRIVOLOUS OR SUBJECT TO BEING LEFT TO THIS MAGISTRATE-ONE JUDGE COURT THAT HAS NOT AFFORDED AN ADEQUATE FORUM FOR VINDICATION OF 1970-98 DENIALS OF FEDERAL CONSTITUTIONAL RIGHTS; AND (3) THAT NO CONTEMPT PROCEEDING SHOULD PRECEDE THIS HEARING?

VII. WHETHER 1964-94 STATE EVIDENCE PLUS 1990-95 FEDERAL EVIDENCE MUST BE TRANSMITTED TO DISTRICT COURT FROM STATE COURTS AND THE CHICAGO ARCHIVES?
VIII. WHETHER 25 YEARS PRO SE NONLAWYER PUBLIC SERVICER WHO SUCCESSFULLY LITIGATED AGAINST DEFENDANTS' AND COURT JUDGE GIBSON'S FRAUDS UPON COURTS WITHOUT DUE PROCESS-EQUAL PROTECTION SHALL RECOVER EIGHT YEARS' 1990-98 CIVIL RIGHTS CLASS ACTION'S REASONABLE ATTORNEY'S FEE AND EXPENSES UNDER CIVIL RIGHTS ATTORNEYS'S FEES AWARD ACT OF 1976 (42 U.S.C.S. § 1988)?

RELIEF SOUGHT

Plaintiffs are petitioning for a writ of mandamus directed to District Judges Hillman and Gibson that will afford: (1) an immediate stay of state and federal court proceedings, (2) emergency transmission from State's Muskegon County

Probate and Circuit courts -- and Chicago archives -- of Don's evidence presented at the 1974 partial trial, and (3) either an immediate convening of a 3-judge district court OR an immediate adequate review/court-scheduled hearing of Don's 1970-98 substantial nonfrivolous constitutional claims for determining that an adequate 3-judge district court forum be afforded.

REASONS WHY THE WRIT SHOULD ISSUE

1. The magistrate-one judge district court has proven to be inadequate.

2. In these extraordinary circumstances, the U.S. Congress has mandated pursuant to 28 USC §§ 2283,2284 an ADEQUATE 3 judge district court rather than a magistrate-one judge INADEQUATE district court

3. Judges Hillman and Gibson refuse to schedule a hearing for determining if a 3-judge district court shall be convened -- thereby refusing to convene a 3-judge district court.

4. Rather than afford an adequate forum for vindication of federal constitutional rights, Judges Hillman and Gibson scheduled contempt proceedings against Don (1) because Don first sought Judge Hillman's certification of the above 8 issues for seeking court of appeals' leave for a 28 USDC 1292(b) emergency interlocutory appeal, and (2) because Don applied for a 3-judge district court without first seeking a magistrate's leave to file the application.

5. Only this court of appeals, not the U.S. Supreme Court, must review district court's refusal to convene a 3-judge district court pursuant to 28 USC §§ 2283,2284.

6. Petitioner Don has already spent 1970-98 28 years seeking vindication of his federal constitutional rights.

7. Don is 75 years of age.

PERTINENT ORDERS, OPINIONS, & PARTS OF RECORD

Don's 1970-98 pleadings -- filed and rejected -- plus 1970-98 state and federal court orders and opinions are pertinent.

See court of appeals 97-1944,1955,2062.

See district court 10/6/98 motion & 2 supplements, 10/7/98 order, 10/8/98 notice, 10/14/98 date correction, 10/14/98 order, 10/16/98 motion & 3 supplements, 10/20/98 magistrate's order, and 10/22/98 brief.

The attached 10/26/98 order highlights Judge Hillman's opposition.

Respectfully submitted,

Dated: October 28, 1998

s/DONALD EDGAR JOHNSON, Nonlawyer In Pro Per
Counsel for Plaintiffs-Petitioners
Motor Home/1657 S. Getty St.
P.O. Box 5407
Muskegon,MI 49445
Phone Installation Available on Request

CERTIFICATE OF SERVICE. It is hereby certified: (1) that the original and five true and accurate copies of this EMERGENCY PETITION FOR WRIT OF MANDAMUS were priority mailed this 28th day of October, 1998 to Clerk Leonard Green, Court of Appeals for the 6th Circuit, 100 East Fifth St. - Room 524, Potter Stewart U.S. Courthouse, Cincinnati, OH 45202; and (2) that true and accurate copies were simultaneously first class mailed to Honorable Douglas W. Hillman, U.S. District Court, c/o Clerk at 452 Federal Bldg., 110 Michigan NW, Grand Rapids, Michigan 49503; Honoarable Benjamin F. GIbson, U.S. District Court, c/o Clerk at 452 Federal Bldg., 110 Michigan NW, Grand Rapids, Michigan 49503; Mich. Asst. Atty. Gen'l Margaret A. Nelson, PO Box 30217, Lansing, MI 48909; Steven C. Kohl, #101, 1400 N. Woodward Ave., Bloomfield Hills, MI 48304-2856; Thomas J. O'Toole, PO Box 786, Muskegon, MI 49443; and Kevin B. Even, PO Box 629, Muskegon, MI 49443. Executed on October 28, 1998.

DONALD EDGAR JOHNSON, Nonlawyer In Pro Per

DETAILED 1955-89 PERTINENT FACTS

Don has been a member in good standing with the American Federation of Musicians of the United States and Canada since joining in 1942 at Ann Arbor, Michigan.

He **never** authorized his 1955-56 founded Kandy Tapes & Records Corp.(Amer. Fed. Musicians of U.S. & Canada) to be Kandy Tapes And Records (Amer.Fed. Musicians of U.S. & Canada).

This Donald E. Johnson never authorized any Lawyer to establish a Kandy Tapes And Records Corp. affiliated with the American Federation of Musicians.

Don never used his Kandy phono records or Kandy Music Publishers (BMI) with copyrighted music as collateral for a loan. Rather, Don financed his Kandy businesses with cash from his traveling entertainer gainful employment.

Don never 9/25/64-to-date borrowed money from the Respondent 3 Johnsons.

Don's 3 year 6% interest promissory notes to his father and two brothers were memos of collateral in the venture because they never let go of joint control with Don of their 1964-1970 moneys invested in the nightclub venture.

Bank statements, the nightclub ledger, and 1974 partial trial testimonys, inter alia, are evidence of proof.

The Respondent 3 Johnsons were not creditors to the joint venture Musikist nightclub in Don's name temporarily until promised fair incorporation.

On 9/5/64, the Respondent 3 Johnsons agreed to minimum $16,000 starting capital to the venture if moneylender H.E. Gibson would loan $8,000.

Respondent Carl A. Johnson, Jr. (Carl-Jr) was a witness to the 9/25/64 Muskegon Bank & Trust Co. President Mr. Buck, Respondent Richard G. Johnson (Richard), Carl-Jr. and Don verbal agreement to establish a $6,000 bank escrow for jointly purchasing a $600.00

"resort" nightclub liquor license.

Carl-Jr witnessed Don passing Carl-Jr's $1100 and Don's $900 to Richard on 9/28/64 marking the legal start of a bona fide joint venture that, by year's end, included Respondent Carl A. Johnson, Sr.'s $3,500 per the 9/5/64 agreement.

On 9/28/64, Don provided Richard with power of attorney #1 to get a nightclub purchase under way <u>after</u> Richard took full custody of Don's $900 and Carl-Jr's $1100 for establishing the $6,000 bank escrow alongside Richard's $2,000 plus Don's $2,000 forthcoming from Don's cashing in his Bankers Life (Iowa) life insurance.

About 11/64 in Cheboygan, Michigan, to-be Michigan Attorney General Frank Kelley interviewed Don before the Gold Front nightclub's owner read and crumbled the telegram from Don's AFM talent agent Ray Auler offering a Chicago engagement which Don had to refuse because he was locked into a nightclub purchase joint venture contract with his father and two brothers.

On 12/15/64, moneylender Harry E. Gibson loaned Don said $8,000 in exchange for Don's 3-years 6% promissory note <u>only</u>.

The nightclub land purchase was in Richard's name until 3/18/65 when it was in Don's name "temporarily" until quick fair incorporation after the nightclub was opened for business and State liquor control commission's approval of the corporation's members.

State agents Respondent Richard's to-be $10,000+ commisioned realtor Anthony J. "Tony" Mark and to-be Municipal Judge atty Mat Locke -- replacing to-be county circuit judge Piercey[56a] -- assured Don that this special arrangement was OK with the Michigan Liquor Control Commission chaired by atty Engel's ex-roomate, atty Stan Thayer.

In 1964-65, Petitioner Don and the Respondent 3 Johnsons were BUYER clients of **perpetrator** ENGLE & ENGEL partnership which jointly with Respondent Attorney Thomas J. O'Toole prepared the temporary "joint venture switch to moneylender" 1/13/65 Amendment to 12/22/64 Sales Agreement for purchase of Novak SELLERS' $30,000 used year-around liquor licenses where the $600 resort license was for just 6-9 months of the year.

Also in 1964-65, in behalf of himself and the three Johnson Respondents BUYERS, Don was a client of the state agent **perpetrator** LANDMAN GRIMM BRADBURY & LAURIN partnership for purchase of the $65,000+ nightclub land and vandalized ex-nightclub-bowling alley building with cloudy title and $25,000+ federal liens from Biermacher, et al, SELLERS.

These perpetrator law firms represented conflicting debtor-creditor interests of both buyers and sellers of the state-controlled public nightclub's land-building and liquor licenses.

Respondents 1977-86 O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF (O'TOOLE STEVENS) plus 1986-90+ O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, PC (O'TOOLE JOHNSON) are derivatives and perpetuators of the **perpetrator** 1964-77 ENGLE & ENGEL a/k/a ENGEL & HIPKISS partnership that utilized Respondent Attorney Thomas J. O'Toole's 1/6/65-redrafted "confidence game" sales agreement amendment that last minute inflated terms where price jumped from $18,000 to $30,000 plus high monthly payments-rate of interest -- and mandating that **nonlawyer** Don wasn't on a joint venture when he was.

Respondent 1969-93 LANDMAN LATIMER CLINK & ROBB partnership and Respondent 1983-93 CULVER LAGUE & McNALLY partnership are derivatives and perpetuators of the perpetrator 1964-69 LANDMAN GRIMM BRADBURY & LAURIN partnership. See Koster.

The 1964-65 Michigan state agent perpetrator lawyers include Chief Justice William P. Rhenquist's late brother in law, Respondent Landman partnership's Attorney **V.S. "Sam" Laurin**, Respondent O'Toole partnership and corporation's Attorney **Thomas J. O'Toole**, and Attorney Albert J. Engel, Jr. n/k/a 1992-93 intervening **Court of Appeals for the Sixth Circuit Judge Albert J. Engel**, a/k/a Senior Circuit Judge Albert J. Engel, Sr.

In 1965, the "Musikist" nightclub Land-building was being purchased in Richard's name until 3/18/65, then in Don's name until incorporation.

Then-attorney Al Engel gave green light to purchase in Don's name the land with cloudy title where the IRS had a $25,000+ lien on premises not in proper Dominec Giovanni name.

Thanks to said attorney Laurin also representing sellers, buyer Don's name remained on the land 1965-71 (while Don was on public welfare 1970-71) and the IRS never received that $30,000 lien plus interest.

Between 1965 and 1970, Petitioner Don and Respondent Carl-Jr were clients of atty Albert J. Engel, Jr plus atty Charles A. Larnard, Jr-recommended Attorney Charles A. Larnard, Sr., (father of atty Judge Larnard, Jr.) who 8/65 took Don's $150 to transfer Don's active Kandy Tapes & Records Corp. (Indiana) to Michigan.

Don's Kandy Tapes & Records Corp.(Ind-AFM) ceased on 9/20/65 and his Kandy Tapes & Records (Mich-AFM) was a reality 1/65-5/67 minimum.

After State agents erroneously registered it as Kandy Tapes **And** Records Corp.(Mich), Carl-Jr 5/67 resigned Kandy Tapes & Records (Mich) rather than jointly with Don make the correction to Kandy Tapes & Records Corp.(Mich).

Between 9/25/64 and 1969, Respondent

Richard was client of said attorney Engel and Richard's Johnson Mold & Mfg. Co. Michigan corporation was client of said Engle & Engel-recommended Attorney Larnard, Jr. who 11/22/66 instructed the 3 Johnson Respondents to take over Don's accounting, the 4 Johnsons not to incorporate until the venture could afford it, and (2) 3/69 became a "bought" unqualified county circuit judge.

Since 3/69, Respondent atty Fred C. Culver, Jr. has been atty for Respondent Richard and his Johnson Mold & Mfg Co. Inc. that became Johnson Technology, etc. inter alia. And for Respondent Carl-Jr and his Port City Machine And Tool Co., Inc.

The $30,000+ liquor license was nearly paid for -- thanks to said Respondent atty O'TOOLE'S 1/13/65 rigid monthly/ interest terms mandating priority payments ahead of other creditors.

No Muskegon area bank would refinance despite Respondent Carl-Jr's and Don's joint pleadings.

The Muskegon Coop Federal Credit Union took furniture as collateral for emergency loan in 1969.

Respondent O'TOOLE JOHNSON, PC's Parmenter Forsyth affiliation influenced San Diego, California DeAnza Trailer Harbor, Inc. to steal Don's 1969-burglarized-of-Kandy business papers-corporate seal mobile home-office-studio under false pretenses of a forthcoming sheriff's lien sale which would afford time for Don to raise $185 for paying late space rental payments at a time when Respondent 3 Johnsons were demanding that real estate and liquor license payments were top priority and business was absolutely rock bottom because, in part, a nearby competitor catered to one-man band Don's crowd with a full orchestra and givaway dinners with backing of Respondent LANDMAN-represented Hackley

Union National Bank's vice president Don McClary who managed the competitor Cottage Inn nightclub new owner's financial affairs.

On 4/9/70, perpetuator Respondent LANDMAN firm's atty Culver chaired the sham meeting that again failed to fairly incorporate the nightclub as Petitioner Don was absolutely exhausted from his monumental contributions to the venture.

Only Respondent Carl-Sr signed his acceptance of the sham proposal.

Richard and Carl-Sr didn't even show at the meeting.

And Carl-Jr -- who had libeled Don as a dope addict to Don's relatives and proposed a corporation awarding Don less than 10¢ on his dollar invested -- filibustered Don's even getting a word in.

Upon being served with Respondent LANDMAN firm-Respondent 3 Johnsons' 5/20/70 foreclosure plus a simultaneous Respondent O'TOOLE JOHNSON's PARMENTER FORSYTH affiliation's corporate nightclub creditor's suit against Don dba Musikist nightclub (until promised fair incorporation of the venture), Don accepted Respondent Carl-Sr's assurance, provided him with the two suits' documents that had been delivered by a fleet of county sheriff cars, pursued Respondent O'TOOLE STEVENS's atty William Hipkiss' representation, and was assured by Richard's ex-atty county judge Charles A. Larnard, Jr. that it was OK to keep the nightclub-grocery store open and not appear in court where Respondent Carl-Sr and/or Attorney Hipkiss would represent Don.

But the Respondent O'TOOLE STEVENS a/k/a ENGLE & HIPKISS Attorney Hipkiss stated, "There's nothing that I can do" which was a <u>big lie</u> as he kept fromDon the long list of 4/15/65 unlawful confidence game documents until 5/16/74.[130a]

And, secretly from Don, Respondent LANDMAN's Atty Culver and the 3 Johnsons had their Attorney Boven obtain unqualified Judge Larnard's 6/26/70 Default Judgment against Don mandating public auction of the joint venture nightclub's $35,000-remodeled $65,000+ appreciated land-building that was in Don's name temporarily until incorporation.[53a]

Don contends that the 6/26/70 default judgment was fraudulently obtained and void for lack of due process since defendant Don had no realistic opportunity to timely meaningfully appear in the unqualified Judge Larnard's court and protect interest in his hard-won majority equity in the ownership of the nightclub's land-building by presenting a meritorious defense.

Then-plaintiff Respondent Richard, et al acquired no rights through the default judgment and can be enjoined by district court from attempting to enforce what was a judgment in name, but a nullity in fact.

Don's 6/30/70 and 8/19/70 Power of Attorneys #2 and #3 were provided to Carl-Sr at his request to wind down the venture when Don would be mitigating damages from the 1969 burglarizing and 6/70 theft of his California-stored mobile home/office.

Carl-Sr used Don's said power of attorneys #2 and #3 to secretly give Don's private joint venture equity to Richard who followed Respondent LANDMAN firm instructions to set up a Jay Corp. to include Richard, Carl-Jr, and atty Culver but not Don who had demanded over 50% equity for his monumental contributions.

Respondent Carl-Jr threatened violence thereby muzzling Don from defending his claims against the venture at a hard-won family meeting in late 1971.

Respondent Judge Danhof was nonjudicially involved in the disappearance of $3,000+ owed nightclub creditor Muskegon Coop Federal Credit Union founded by the suspect Donald E. Johnson, Muskegon Heights man who became Muskegon's Mayor, 1964-69.

Don and a Californian Legal Aid attorney "Jim" filed a 1971-72 California state suit against San Diego's DeAnza Trailer Harbor, Inc. which awarded Don a mere $1!

After Respondent Carl-Sr sent a small amount of money as gift, Don bused California to Washington, DC; but Attorney General John Mitchell and his staff were too busy to meet with Don.

Don worked 7 days weekly for former competitor's nightclub to pay off Respondent O'TOOLE JOHNSON associate atty Robert Forsyth's appraised $15,000 due a Musikist nightclub creditor.

Muskegon's FMB Lumberman's Bank's representative Parmenter, Forsyth & Rudd which had issued a creditor corporation's suit against Don on 5/20/70, held Don's bag of evidence for 6 months before deciding not to represent Don.

Don in pro per filed a 4/73 breach of contract-conversion-libel & slander suit against the Respondent 3-Johnson joint venturers, his father and 2 brothers, who were disguised as moneylenders by Respondent LANDMAN law firm which represented both buyers and sellers of the nightclub land-building, two involved banks, the Muskegon Chronicle newspaper, inter alia.

During a 1973 hearing before County Circuit Judge Schoener,[96a] Don was instructed that he must rephraze his pro se federal constitution claim utilizing state court rules and procedures.

Nonlawyer Don's State Bar in Lansing telephone-recommended assistant attorney John B. Olsen drafted the accepted 1974 5th amended complaint that omitted any federal constitution claim.[121a]

Contrary to atty Olsen's off-record insistance, Don never "gave away" his Kandy Tapes & Records Corp.(Amer.Fed. Musicians of U.S. and Canada).

Don's preponderance of evidence proved that there was a family joint venture. A lengthy list of events was pertinent.[134a]

But unqualified and "bought" ex-Muskegon Heights Municipal Judge Piercey immediately ruled that there was no joint venture, that it was a moneylending venture, walked off the bench, and signed Respondent LANDMAN's atty McNally's prepared 12/9/74 dismissal before Don had presented <u>all</u> of his evidence and a closing argument. (Don's opening argument transcript was lost by the young new court reporter from Brooklyn, N.Y.[56a]

Upon re-applying for public welfare in 1975, a "Bernie" had been receiving public welfare using Don's SS#382147430.

In 1976, Don "was allowed" minimum AFM union wage gainful entertainer employment, bootstrapped himself off welfare, and piecemeal filed the "Danhoff" court of appeals-required $5,000 transcript of 1973-82 county trial court proceedings in <u>trial</u> court per court of appeals 2/5/76 order.[57a]

But that hard-won transcript was never reviewed by an appellate court to this date, 1999!

On 11/23/82 and after the full transcript was filed in trial court, the "Danhof" court of appeals dismissed Don's application for a delayed appeal of right because the transcript was not filed <u>in the court of appeals</u>.[63a]

In 5/83, Don paid cash to atty Veurink who moved for a new trial with long list of grounds.[98a]

Don fired the Justian & Veurink law firm for representing Don to the Michigan Supreme Court with wrong facts and laws.

Respondent LANDMAN partnership filed a 6/6/83 fraud upon the courts-obstruction of justice document that prevented Don from a scheduled evidentiary hearing with trial judge replacement #1.[64a,65a]

Don's evidence presented to partial 1974 trial was stolen from the county files, mysteriously returned after Don threatened to sue the county, ordered removed in 1983,[65a] and immediately stored in Don's bank vault.

On 11/29/83, Don was required to file an independent action because more than one year[107a] elapsed from 12/9/74 dismissal.

On 2/15/84, trial judge replacement #2 Kobza rejected Don's independent action against state agents and their clients because only the county prosecutor could file such a criminal action.[107a]

In January, 1986, Respondent Carl-Sr died and Don filed priority claim against his $448,000 undervalued estate.

On 2/4/86, a non-"Danhof" appellate judge ordered that Judge Kobza allow Don to file an independent action.[68a]

At the 4/21/86 hearing, Don complained that he never received any just compensation.[109a]

At hearings where Don was prohibited from entering any of his 1974 partial trial exhibits, Respondent CULVER, Respondent O'TOOLE STEVENS, and Respondent O'TOOLE JOHNSON law firms pled res judicata,

Judge Kobza denied Don's motion to disqualify dual-representation law firms from representing Respondent 3 Johnsons, consolidated the 73-C7432-CK contract and 86-21207-CZ independent actions,

and dismissed them with full prejudice. 69a, 70a, 110a

Michigan's Attorney General Frank Kelley refused to investigate, writing that the State couldn't afford it. (He was State Attorney General about 1965-98).

During and since Petitioner Don's 1973-89 #73-C7432, #86-21207, and #86-59607 contract, independent, and estate claim three State actions against the Respondent 3 Johnsons, lawyers, and the Judge Kobza who ordered Don's evidence removed, 107a, 108a the Respondent State's highest court refused to remedy any of pro se nonlawyer Petitioner's constitutional claims. 98a, 108a, 112a, 114a, 116a

"Johnson v Johnson et al File No. 86-21207-CZ: * * * IT IS ORDERED that Muskegon County Circuit Court action 73-C7432-CK be consolidated with the instant case 86-21207-CZ, and IT IS FURTHER ORDERED * * * that plaintiff's claims be dismissed with full prejudice, but without costs..." 6/20/86 Muskegon County Circuit Court Order. 69a

"DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and The Estate Of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees No. 92822. L.C. No. 86-21207-CZ: In this cause, plaintiff-appellant has filed a motion to compel the transmission of the lower court record in Muskegon County Circuit Court No. 73-C-7432 to this Court, and a motion to expedite and no answer thereto having been filed, and due consideration thereof having been had by and the same is hereby DENIED at this time. The denial of the motion shall not bar this Court from requesting the transmittal of the record if the Court later determines that it needs the record in Muskegon County Ciorcuit Court No. 73-C-7432: IT IS FURTHER ORDERED that the motion to expedite be and the same is hereby DENIED." 2/25/87 "Danhof" Mich Court of Appeals No. 92822. 71a

"Donald Edgar Johnson, Plaintiff-Appellant,

v. RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON,., and THE ESTATE OF CARL A. JOHNSON, SR., Defendant-Appellees. SC 83419, COA 92822 LC 86-021207-CZ: On order of the Court, the delayed application for leave to appeal is considered and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court." 3/29/89 Michigan Supreme Court Order 83419. (Note: "LC 86-021207-CZ" is correction by 4/14/89 Order).[79a]

Don was not provided a full and fair opportunity to litigate any of the issues including his constitutional claim where state judges would only review complaints omitting federal constitutional claims prepared by Don-retained state-controlled agent assistant lawyers.

The joint venture nightclub 1964-67 Ledger plus 1964-65 memos of collateral looking like promissory notes were received at the 1974 trial were never provided appellate review and should be on file in Muskegon's Probate Court.

The Michigan Supreme Court has been prejudiced by a Justice Michael E. Cavanagh's being a former member of Respondent Chief Judge Robert Danhof's 1976-89 Michigan Court of Appeals which issued false statements-frauds upon the courts-obstruction of justice.

Don never "gave away" his properties. Rather, they were stolen by perpetrators and perpetuators of said confidence game and allegedly used, in part, as collateral for substantial moneys within financial institutions involving at least one other Muskegon County "Donald E. Johnson" with lookalike signature.

The stolen moneys were secretly from Don allegedly used to establish financial institutions and finance political action committees, sponser lawyers to becoming judges, buildings, and provide free music concerts.

And Muskegon Coop Federal Union, Muskegon's horse racetrack, FMB Lumberman's Bank, and huge Terrace Plaza building exactly like a Wilkes-Barre, Pennsylvania building, etc.

And Muskegon County radio and/or TV Channels that influence votes.

It appears that one interest group stole Don's valid Kandy Tapes & Records Corp. title and a second interest group fabricated an invalid Kandy Tapes and Records Corp. title. Both titles were allegedly used as collateral in financial institutions.

There are indications that involved groups are two religious factions within two opposing political parties with racial overtones.

Don's three 1973-86-filed Michigan state actions are still pending for the reason that the decisions were procured and prolonged by frauds upon the courts without Don's reasonable access, due process, equal protection, and just compensation for private properties taken for public and private use-influencing votes under color of state law and false pretense that Don gave those properties away by way of his Power of Attorneys #2 and #3 that were issued at joint venturer Respondent Carl-Sr's demand for the purpose of properly winding down the family joint venture.

Both the state circuit court independent action 86-21207-CZ and the probate court Respondent Carl-Sr estate action 86-59607-SE were precluded under doctrine of res judicata without Don's being allowed to present evidence presented to his 12/9/74-dismissed circuit court partial contract action no. 73-C7432-CK.

The Respondent State and Its nonjudicial and judicial confidence game perpetuator chief court of appeals judge are not 11th Amendment immune from just compensation joint obligation and

accountability who helped swindle nonlawyer public nightclub servicer to indigency, then kept conspiring to interfere with his civil rights.

Said atty Stan Thayer and ex-chairman of the Michigan Liquor Control Commission handled subsequent takeover of the nightclub land-building where the nightclub was bulldozed and replaced with a new "Chi Chi" chain restaurant and cocktail lounge.

Petitioner's 11/2/98 petition for writ of mandamus[147a] for unqualified one judge district court's **NINE YEARS** re-refusal to schedule a hearing to review constitutional claims or convene a three-judge district court **was not derailed** by the **one** judge court of appeals' 11/13/98 denial -- which was never reviewed by full **three** judge panel as requested by 11/14/98 Cincinnati main post office mailing -- of Don's 11/13/98 emergency motion for stay of magistrate-one unqualified judge district court's 10/26/98-scheduled[48a] 11/16/98 contempt hearing for Don's properly filing for a certified **interlocutory** appeal under 28 USC § 1292(b) rather than a direct appeal of the 10/26/98 order.[48a]

On 12/8/98 and in support of his 11/13/98 emergency motion for stay of proceedings and rehearing en banc, Don mailed to all parties transcript copies of the unwarranted 11/16/98 civil contempt hearing's $200 penalty.

Don's receiving $30,000 plus interest in 1990 as 10% of his father's $448,000+ undervalued 1986 estate represented by Respondent O'TOOLE firms was **absolutely NOT** the constitution-mandated "just compensation" required in Don's $2-million+ 73-C7432CK lawsuit which Michigan Supreme Court repeatedly denied leave to appeal because **"we are not persuaded that the questions presented should be reviewed by this court".**